

## Exhibit D

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x  
4 UNITED STATES OF AMERICA,

5 -vs-

7:19-CR-497 (NSR)

BAIL HEARING

6 MATITYAU MOSHE MALKA,  
7 MORDECHAY MALKA, et al.

8 Defendants.  
9 -----x

10 \*Proceedings recorded via digital recording device\*

11 United States Courthouse  
12 White Plains, New York

13 April 19, 2022

14 B e f o r e:

15 HONORABLE ANDREW E. KRAUSE,  
16 Magistrate Judge

17 A P P E A R A N C E S:

18 DAMIAN WILLIAMS

19 United States Attorney for the  
20 Southern District of New York

21 JAMES A. LIGTENBERG

Assistant United States Attorney

22 JOSEPH A. VITA, ESQ.

Standby Attorney for Pro Se Defendant, Matityau Moshe Malka

23 SUSAN C. WOLFE, ESQ.

Standby Attorney for Pro Se Defendant, Mordechay Malka

1 ALSO PRESENT:

2 VINCENT ADAMS, U.S.P.O.  
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1 MR. LIGTENBERG: Good morning, your Honor. Jim  
2 Ligtenberg for the Government.

3 THE COURT: Good morning, Mr. Ligtenberg.

4 MR. VITA: Your Honor, Matityau Moshe Malka is  
5 appearing pro se and I am standby counsel, Mr. Joseph Vita.

6 THE COURT: Good morning, Mr. Vita. Good morning, Mr.  
7 Malka.

8 THE DEFENDANT: Matityau Moshe Malka. Good morning,  
9 your Honor.

10 THE COURT: Good morning, Mr. Malka.

11 THE INTERPRETER: Stephen Zeger, standby Yiddish  
12 interpreter for the federal courts.

13 THE COURT: Good morning, Mr. Zeger.

14 MR. WOLFE: Good morning, your Honor. Susan Wolfe,  
15 standby counsel for Mordechay Malka.

16 THE COURT: Good morning, Ms. Wolfe. Good morning,  
17 Mr. Malka.

18 MR. MORDECHAY MALKA: Good morning. Mordechay Malka,  
19 your Honor.

20 THE COURT: Good morning.

21 Okay, my name is Magistrate Judge Krause. It's nice  
22 to meet those of you who I have not met before.

23 Let me just first start by saying you can see here  
24 that we do not have a court reporter in the courtroom here  
25 today. That's pretty standard for appearances before magistrate

1 judges, as you may know. The proceeding is being recorded and  
2 it will be possible to create a transcript of today's proceeding  
3 if it's necessary for whatever reason.

4 Mr. Ligtenberg, I'll ask the Government to please  
5 order a transcript of the proceeding just in case it's  
6 necessary, and we'll see whether that needs to be done on an  
7 expedited basis or whether it can be done for regular delivery  
8 depending on how things go today.

9 MR. LIGTENBERG: Will do, your Honor.

10 THE COURT: Okay.

11 With that in mind, Mr. Malka and Mr. Malka in  
12 particular, I will ask that when you address the Court, you make  
13 sure to speak slowly and you speak into the microphone because  
14 the recording system that we have in the courtroom only works  
15 properly through the microphones, so in order to make sure that  
16 your arguments are heard and picked up properly for purposes of  
17 creating a transcript, it's necessary to do what I'm doing here,  
18 which is speak clearly and into the microphone. We can see as  
19 we proceed today whether it will make more sense for you to  
20 stand as you address the Court, which is typical, or whether for  
21 purposes of a clear and accurate recording, it makes more sense  
22 for you to stay seated so you can speak more clearly into the  
23 microphone. We can evaluate that as we proceed today.

24 Okay?

25 MR. MATITYAU MALKA: Yes.

1 THE COURT: All right, I see you both nodding your  
2 heads, so thank you.

3 Let me also just start out here today by setting the  
4 stage for what this proceeding is and what this proceeding  
5 isn't.

6 First of all, I've received a lot of submissions from  
7 the both sides in advance of today's hearing and I have  
8 reviewed, heh, a lot of material, but not every single scrap of  
9 paper that I have received.

10 From Mr. Malka and Mr. Malka, I received on Friday  
11 evening at approximately ten p.m., that is April 15th, a  
12 five-page letter dated April 15th, which I have read in its  
13 entirety, and approximately 360 pages of additional materials  
14 submitted by the defendants in support of their application here  
15 today. I have looked through all of those materials. I have  
16 read some of them. I have not read each and every page of those  
17 materials.

18 Last night, in the evening, I received from the  
19 Government a letter which is on the docket at ECF no. 551. I  
20 should have said that the defendants' submission is on the  
21 docket at ECF no. 546. The Government's submission is on the  
22 docket at ECF no. 551. It's a nine-page, single-spaced letter  
23 which I have read in its entirety, and there are approximately  
24 200 pages of transcripts and other materials attached to that  
25 letter. Again, I have looked at all of that material; I have

1 not read every single page of that material.

2           Some of those transcripts were of proceedings that Mr.  
3 Matityau Malka --

4           I apologize if I mispronounce your name. Is that  
5 close, Mr. Malka?

6           MR. MATITYAU MALKA: It's a hundred percent correct.

7           THE COURT: Okay, can you say it again for me, please.

8           MR. MATITYAU MALKA: Matityau Malka.

9           THE COURT: Matityau?

10          MR. MATITYAU MALKA: Malka.

11          THE COURT: Malka.

12          Malka I have, but Matityau, is that correct?

13          MR. MATITYAU MALKA: Yes, your Honor.

14          THE COURT: Okay, thank you. And if I misstate that,  
15 I apologize, and please feel free to correct me.

16          Several of the transcripts that were submitted by the  
17 Government, I believe two of the transcripts, were of  
18 proceedings that Mr. Matityau Malka participated in, so those  
19 would be proceedings that he at least would be familiar with,  
20 whether or not he has seen those transcripts or not, and many of  
21 the points raised in the Government's letter of last evening are  
22 points that have been raised at other proceedings in this case,  
23 specifically in advance of the two prior bail hearings that  
24 Matityau Malka participated in before Judge McCarthy and Judge  
25 Román.

1           So I have reviewed the materials I've just described.  
2           I've also reviewed the Pre-Trial Services reports for  
3 each defendant. Those were prepared on...February 3rd, 2021, in  
4 the case of Matityau Malka and back in...July of 2019 in the  
5 case of Mordechay Malka. I've also reviewed the current  
6 superseding indictment in this case, which is on the docket at  
7 ECF no. 358. It's the third superseding indictment. So I've  
8 reviewed all of that material.

9           And it just bears repeating that what we are here for  
10 today is a bail hearing, that is, to determine if there is any  
11 condition or combination of conditions that will reasonably  
12 assure these defendants' appearance in court as required and the  
13 safety of any other person and the community. We are not here  
14 to conduct a mini-trial on the merits of the Government's  
15 allegations against these defendants. My understanding is that  
16 this case is currently scheduled for trial on May 18th before  
17 Judge Román, so approximately one month from today. That will  
18 be the opportunity for both sides to litigate the charges  
19 against these defendants.

20           As in every case, the defendants are entitled -- every  
21 criminal case, the defendants are entitled to the presumption of  
22 innocence. That applies for purposes of this proceeding as  
23 well. At the same time, I am required by statute to consider as  
24 part of the bail evaluation the nature and the circumstances of  
25 the offenses charged, the weight of the evidence against you,



1 your history and characteristics, and the nature and seriousness  
2 of the danger to any person or the community that would be posed  
3 by your release.

4           Now, based on the submissions I have received, my  
5 understanding is that the Government may be willing to consent  
6 to the release of Mr. Malka and Mr. Malka as long as that  
7 release is subject to certain conditions that the Government  
8 believes are necessary to ensure the appearance of the  
9 defendants and the safety of the community. I also further  
10 understand from the Government's submission that there is some  
11 additional information that the Government would need to have  
12 before the Government can fully determine whether it will, in  
13 fact, consent to the defendants' release. Specifically, as set  
14 forth in Mr. Ligtenberg's letter last night, the Government does  
15 not currently understand what the defendants' proposal is with  
16 respect to where they would live if they were released pursuant  
17 to conditions, with whom they would live, and under what  
18 conditions.

19           Now, Mr. Ligtenberg, were there any other particular  
20 pieces of information -- aside from the question of  
21 whether...aside from the question of whether the defendants will  
22 consent to some of the specific conditions that the Government  
23 has proposed, are there any other pieces of information that the  
24 Government needs to have from the defendants about the potential  
25 bail package in order to evaluate whether or not the Government

1 would consent to release?

2 MR. LIGTENBERG: I think the only other thing I would  
3 mention, as your Honor knows, in the normal course, our office  
4 has a process by which we would approve co-signers, which often  
5 happens either before or after the release. I think we would  
6 want to dive into who the co-signers are as well.

7 THE COURT: Okay.

8 And just -- thank you, Mr. Ligtenberg.

9 Just to be clear, what Mr. Ligtenberg is referring to  
10 there is if there were financial conditions associated with the  
11 release, meaning that the release were subject to a certain  
12 unsecured bond, that bond typically, in almost every case, is  
13 co-signed by one or more, sometimes up to four or five,  
14 individuals who are either financially responsible individuals,  
15 people who have income such that -- or assets such that they  
16 could satisfy the bond if there were a violation of the  
17 conditions, or people who have what is referred to as moral  
18 suasion over the defendants, people who could help ensure that  
19 the defendants in question would appear at court appearances as  
20 required.

21 And as Mr. Ligtenberg explained, in every case that  
22 I'm aware of, the Government has a process whereby it interviews  
23 these potential co-signers to assess whether they are, in fact,  
24 appropriate individuals to provide the financial assurances or  
25 moral suasion that is contemplated by the bond. That process

1 usually takes a couple of days, depending on the availability of  
2 the co-signers to meet with the Government, but the Government  
3 can generally make those interviews happen pretty quickly,  
4 especially in this day and age when a lot of those interviews,  
5 my understanding is, are taking place by video or telephone even  
6 if necessary.

7 Is that correct, Mr. Ligtenberg?

8 MR. LIGTENBERG: Yes, your Honor.

9 THE COURT: Okay.

10 Now, I'm just going to go off the record for a second  
11 and pause.

12 I have a note here, Ms. Brown, the people who are  
13 trying to dial in to the conference line?

14 (Off-the-record discussion)

15 THE COURT: While you do that, Ms. Brown, let me just  
16 also add -- we can go back on the record for this.

17 Mr. Malka and Mr. Malka, in nearly every case where  
18 defendants are seeking release on bail conditions, the  
19 defendants through their counsel, where they have counsel, will  
20 provide information for the Government to consider about the  
21 proposed bail conditions in advance of a bail hearing, and that  
22 information might include some of the things that Mr. Ligtenberg  
23 has referenced in his letter and that I have referenced here  
24 today, such as where you would propose to live upon release.  
25 That is because if you are released, it would be subject to the

1 supervision of the Pre-Trial Services Office of the Department  
2 of Probation and that information is necessary for Pre-Trial  
3 Services to evaluate and to be able to understand what the  
4 supervision would look like.

5           So I understand that that information has not been  
6 provided here. I just want you to understand that it is not at  
7 all atypical or unusual for the Government to request this  
8 information and, in fact, it's necessary for the Court to have  
9 that information in order to evaluate whether release subject to  
10 conditions is appropriate.

11           MR. LIGTENBERG: Your Honor, just to make clear, just  
12 in the last few minutes as I arrived to court, standby counsel  
13 both showed me addresses where the defendants are proposing to  
14 live, but, of course, having just received them, I have no  
15 ability to do any due diligence or look into the identity of  
16 that person, and also, I believe they provided the same address,  
17 which the Government would oppose consistent with our proposed  
18 condition that the defendants not have contact with each other  
19 outside the presence of standby counsel.

20           THE COURT: Okay, thank you, Mr. Ligtenberg, and thank  
21 you for the update on that.

22           And let me just also make sure I understand, the  
23 Pre-Trial Services reports, which were prepared in 2019 and 2021  
24 as I alluded to earlier, both contain the recommendations from  
25 the Pre-Trial Services Office that the defendants be detained

1 because, according to both reports, there is no condition or  
2 combination of conditions that Pre-Trial Services believed would  
3 reasonably assure the appearance of the defendants here as  
4 required and the safety of the community.

5 Mr. Adams, is it correct that that is still the  
6 position of Pre-Trial Services as to both defendants?

7 OFFICER ADAMS: Yes, your Honor.

8 THE COURT: Thank you, Mr. Adams. Okay.

9 Just wait to see if we can connect these folks through  
10 the conference line.

11 (Brief pause)

12 THE COURT: Okay, I think we have now successfully  
13 connected the teleconference line and we have, it sounds like,  
14 one or two individuals on the line who will be muted for the  
15 purposes of this proceeding, but they should be able to listen  
16 and hear at least relatively clearly, especially if we continue  
17 to speak into the microphones as I indicated earlier. Perfect.

18 Okay, so that concludes my introductory remarks to  
19 sort of set the stage for where we are today.

20 Mr. Ligtenberg, let me turn to you.

21 Again, I have read the Government's submission and so  
22 there's no need to recite all of that in detail. I just want to  
23 turn to you to have you articulate whatever additional  
24 information you might like me to have as we start out this  
25 proceeding and particularly what the Government envisions in

1 terms of potential conditions for release.

2 MR. LIGTENBERG: Yes, your Honor, and I don't have  
3 much to add that wasn't in our letter.

4 We do feel that the defendants are significant flight  
5 risks and pose a significant danger to the community given their  
6 minimal ties to the U.S., the connections overseas, and the  
7 nature of the offense which involved, as your Honor knows,  
8 taking these kids outside the U.S., so, you know, we certainly  
9 think those are the factors that led Pre-Trial to recommend  
10 detention.

11 We also recognize that the defendants have been  
12 incarcerated for a long time. We are trying to work with them  
13 to come up with conditions that we think would be appropriate in  
14 order to ensure that they do not flee and that they do not try  
15 to kidnap these kids and try to take them out again, but, as  
16 we've noted in our letter, I think the devil is in the details,  
17 so our conditions are laid out, I'm happy to list them, but -- I  
18 think, on page 8 of our letter.

19 And in addition to that, we would want sort of --  
20 especially given the history with respect to one of these  
21 defendants of indicating to Judge Román that he would not follow  
22 conditions, we would want to be satisfied that the defendants  
23 will comply with conditions even if they disagree with it here  
24 in court, and then we'd also want to conduct our due diligence  
25 on the place they're living and who they're proposing to live

1 with.

2 THE COURT: Okay. And just because Mr. Malka and Mr.  
3 Malka may not have had the opportunity to read your letter,  
4 while they may be familiar with the conditions, especially  
5 Matityau Malka would be familiar with these conditions because  
6 you had proposed them in prior bail hearings with him, I want to  
7 make sure that Mordechay Malka is also familiar with the  
8 proposal, and I think just for clarity of the record, even  
9 though it is in the letter and I have read it, I think it does  
10 make sense, Mr. Ligtenberg, if you'd read each of the  
11 Government's proposed eight conditions so that we can have a  
12 discussion about those.

13 MR. LIGTENBERG: Yes, your Honor.

14 THE COURT: Thank you.

15 MR. LIGTENBERG: So a \$250,000 personal recognizance  
16 bond with five financially responsible co-signers; home  
17 confinement; the defendant cannot directly or indirectly  
18 associate or have any contact with known Government witnesses,  
19 victims, and victims' family members, although this would not  
20 limit investigators from conducting appropriate defense  
21 investigations conducted in the presence of standby counsel in a  
22 language that standby counsel can understand; access to one  
23 telephone without internet access and a pre-approved list of  
24 numbers to be called and consent to a pen register; access to a  
25 laptop computer with limited internet capability to be monitored

1 by Pre-Trial Services; consent to unscheduled inspection of  
2 phone and laptop; the defendant cannot directly or indirectly  
3 associate or have any contact outside the presence of standby  
4 counsel with his co-defendants and any contact in the presence  
5 of standby counsel must be in a language that standby counsel  
6 can understand; and finally, the defendant cannot directly or  
7 indirectly associate or have contact with any individual  
8 currently or formerly associated with Lev Tahor. However, the  
9 defendant can submit a list of names of people associated with  
10 Lev Tahor to the Government and Pre-Trial Services for approval  
11 for communications with those specific people.

12 THE COURT: All right, just let me ask a couple of  
13 questions about this so I understand the scope of the  
14 Government's proposal.

15 First, with respect to the home confinement proposal,  
16 would that be home confinement to be enforced with location  
17 monitoring?

18 MR. LIGTENBERG: Yes, your Honor.

19 THE COURT: Okay.

20 Also, just to follow up on the bond, earlier I  
21 referred to the bond as an unsecured bond. I assume that is  
22 what the Government's proposal is here?

23 MR. LIGTENBERG: Um...

24 THE COURT: I mean secured -- there would be  
25 financially responsible co-signers, but there wouldn't be any



1 obligation for the defendant or their co-signers to put up any  
2 cash, collateral, or property or anything like that, correct?

3 MR. LIGTENBERG: I think we would be asking for a  
4 secured bond.

5 THE COURT: Okay. In the amount of what?

6 MR. LIGTENBERG: \$250,000.

7 THE COURT: The entirety of it secured?

8 MR. LIGTENBERG: Yes, your Honor.

9 THE COURT: Okay.

10 And with respect to the conditions having to do with  
11 contacts with members of Lev Tahor, has that been a condition  
12 that has been accepted and implemented with respect to any other  
13 defendants?

14 I know this is a multi-defendant case and different  
15 defendants are at different stages, I don't have the familiarity  
16 with the case that Judge Román does obviously, but I know that  
17 there have been different proceedings as indicated in some of  
18 the Government's submissions, so has this condition in  
19 particular been implemented with respect to any other defendants  
20 who are currently out on bond?

21 MR. LIGTENBERG: Yes, your Honor. One of the  
22 defendants' co-defendants about two months ago was released with  
23 the consent of the Government. It included this condition. The  
24 defendant provided a list of individuals associated with Lev  
25 Tahor that he wanted to contact, and in that case, the

1 Government approved contact with every individual on that list.

2 THE COURT: Okay, and approximately how many people  
3 were on that list if you recall?

4 MR. LIGTENBERG: I think approximately twenty?

5 THE COURT: Okay.

6 And in that case -- and, again, every defendant is  
7 situated differently and has to be considered individually, so  
8 just because certain conditions were implemented for one  
9 defendant doesn't mean that those conditions are appropriate or  
10 sufficient for another day necessarily, but it does inform the  
11 Court's understanding of how these conditions can or could be  
12 implemented if I were to order those conditions, so that's why  
13 I'm asking these questions.

14 With respect to the other defendant that you've  
15 referenced, Mr. Ligtenberg, would there -- were the conditions  
16 generally similar to the eight conditions listed here? Were  
17 there other conditions that were or were not included with  
18 respect to that defendant?

19 MR. LIGTENBERG: I believe they were, they were  
20 roughly similar.

21 THE COURT: Okay.

22 MR. LIGTENBERG: I don't remember the exact  
23 parameters, but I believe they were roughly similar.

24 THE COURT: That's fine. Okay, thank you, Mr.  
25 Ligtenberg. Anything else that you'd like to add?

1 MR. LIGTENBERG: No, your Honor.

2 THE COURT: Okay.

3 So Mr. Malka and Mr. Malka, I understand that you are  
4 representing yourselves in this case pro se with the assistance  
5 of standby counsel. I will now turn to each of you to hear your  
6 position with respect to the proposed conditions of release.

7 What we have here is...not necessarily the typical  
8 scenario that we have in a hearing like this. Very often, the  
9 threshold issue in dispute is that the Government believes that  
10 the defendant should not be released at all. The Government  
11 very often takes the position that there is no combination of  
12 conditions that could reasonably assure the defendants'  
13 appearance or the safety of any person or the community. The  
14 Government often takes a position that there are conditions, but  
15 it's often the case when we have a disputed hearing, like the  
16 one we have here, that the Government's position is there should  
17 not be release at all.

18 That's not actually the Government's position today,  
19 but the Government has taken the position that in order for it  
20 to be comfortable with release and in order to consent to  
21 release, these conditions would be required, so we sort of can  
22 start our discussion a bit further along than where we might  
23 otherwise have to start the discussion, which would be at the  
24 threshold question of whether there is any condition or  
25 combination of conditions that would be appropriate.

1           So I'm not sure who wants to begin. Have you  
2 discussed who should go first?

3           Mordechay Malka is indicating that he would like to go  
4 first and so I'm happy to proceed that way, Mr. Malka, if you'd  
5 like to begin with sharing your thoughts. Again, ordinarily I  
6 would ask you to stand, but if it's easier for you to speak  
7 directly into the microphone while seated, that's actually fine  
8 also, especially so that we can make sure that we have a clear  
9 recording.

10           MR. MORDECHAY MALKA: Thank you, Your Honor.

11           THE COURT: So I'd just ask that you bring the  
12 microphone closer to you and we'll begin that way.

13           MR. MORDECHAY MALKA: Okay, thank you, Your Honor.

14           I'm actually a little -- just for to start, I'm a  
15 little confused how to proceed here because, first of all, the  
16 Government submit their nine pages yesterday late night. Of  
17 course, no one of us was -- had the opportunity to even look  
18 into that or to know more. I mean, I hear, like, a few  
19 statements, what it says, my wife just told me on the phone some  
20 statements what it says there, but I can say that...I, I, I  
21 didn't, of course, had a chance to read it, to be able to  
22 respond to it, as I should, in a normal manner, but --

23           THE COURT: Okay, well, let me just stop you there for  
24 one second.

25           I do understand that. I will say that many of these

1 arguments are arguments that the Government has made in many  
2 prior proceedings in this case. As I alluded to earlier, I know  
3 this is your first bail hearing, Mr. Malka, so you may not have  
4 had this letter filed in proceedings that specifically  
5 implicated your bail application. However, I don't want to make  
6 an assumption.

7 Are the two of you brothers or you just have the same  
8 last name?

9 MR. MORDECHAY MALKA: Cousins.

10 THE COURT: Cousins, okay.

11 So your cousin has seen almost all of these arguments  
12 before because they are almost identical to the arguments that  
13 were raised in his prior bail hearings, and so while I  
14 understand that that's not necessarily true for you, I don't  
15 think there's all that much in this submission that is new. I  
16 understand that you've been working on this case in your own  
17 defense for a long time. A lot of the recitations in the  
18 Government's letter are taken actually almost verbatim from the  
19 indictment, which you're certainly familiar with.

20 So I do understand that the submission came in late.  
21 I will say that that is also not uncommon in a bail hearing.  
22 Sometimes the submissions come in late. That happens. Your  
23 submissions came in on Friday night and it was 400 pages, so the  
24 Government didn't have a tremendous amount of time with that,  
25 although I think in your case also, many of those submissions

1 were things that the Government had seen already, so we're all  
2 trying to do the best we can, but I recognize that this did come  
3 in last night.

4           What I would suggest that you do is focus on the  
5 proposed conditions that the Government has considered, because  
6 if there is a way forward where you could see abiding by those  
7 conditions, then it -- despite the recommendation of Pre-Trial  
8 Services, I think I could find a way to release you subject to  
9 conditions.

10           I haven't made any final determinations about whether  
11 those conditions are appropriate or not because I do want to  
12 hear your arguments about them as well, but there's a proposal  
13 on the table that provides a pathway to your release and so if  
14 there are aspects of that proposal that are not agreeable to  
15 you, I think we should focus your presentation now on the  
16 portions of that proposal that are not agreeable to you.

17           Does that make sense?

18           MR. MORDECHAY MALKA: Thank you, Your Honor.

19           THE COURT: Okay.

20           MR. MORDECHAY MALKA: So this exactly what I start to  
21 explain it.

22           General, just to go over the conditions, I mean, most  
23 -- of course, the, the, the fact of bail conditions is not of --  
24 I'm not strange to that. I know this is common and I will agree  
25 and we always will -- we always said that we will do whatever

1 any judge, whatever, any order of any court. However, those are  
2 severe conditions. Those are conditions that is not usually  
3 always made. I can say there's some conditions here that I  
4 don't know if in history would happen such a condition. I will  
5 come to that.

6 But --

7 THE COURT: Well, I'm not going to keep interrupting  
8 you because I do want to give you an opportunity to speak, but  
9 it's clearly not accurate to say that these conditions have  
10 never in history been implemented because Mr. Ligtenberg just  
11 said they were implemented with respect to one of your  
12 co-defendants a few weeks ago, so it -- now, if your point is  
13 that they've never in history been implemented prior to this  
14 case, I have no way of evaluating that or not. I will say that  
15 the vast majority of these conditions are not all that uncommon.

16 There are a couple that are unusual, undoubtedly, but  
17 many of these conditions are imposed routinely in cases  
18 involving multiple defendants. In particular, the condition  
19 that one defendant cannot have contact, directly or indirectly,  
20 with his or her co-defendants outside the presence of counsel,  
21 that is a routine condition, as Ms. Wolfe or Mr. Vita could let  
22 you know, very, very common condition that rarely receives any  
23 objection. That's not to say that you can't make an objection,  
24 but it's not at all unusual, certainly not unprecedented.

25 The condition about contact with, with individuals

1 currently or formerly associated with Lev Tahor is more unusual,  
2 undoubtedly, but there are facts and circumstances in this case  
3 that motivate that condition, so...

4           Anyway, please proceed.

5           MR. MORDECHAY MALKA: Okay, so, your Honor, this is  
6 the exact point, pinpoint that I want to get.

7           Because the Government is asking such severe  
8 conditions that I believe it's very severe and, I mean...even  
9 without the, the restrictions about religious, the religious  
10 group, just home confinement is also not -- not everyone have  
11 home confinement with electronic monitoring. It's usually the  
12 -- on the most higher standard of conditions that this is in.

13           Now, the reason to impose conditions is only assure  
14 that the person is not a flight risk or not dangerous. If those  
15 conditions that the Government is asking is forcing us to stay  
16 in jail, as it happens for two years already, because we cannot  
17 accept those such conditions, some of them because it violates  
18 our constitutional right as freedom of religion, some of them is  
19 directly jeopardizing our ability to defend ourselves. Then the  
20 results is that we stay in jail. So if this is the other side  
21 of the story, then that's why we came to the bail hearing with a  
22 totally different perspective.

23           I want to prove and I want to show, as my right is, I  
24 believe, maybe not, the Court will tell me, that I'm not --  
25 there's no any concern of flight risk or dangerous, not to the



1 community, nor to any person. This is, this is -- I'm ready to  
2 prove it. Behind {sic} a reasonable doubt. I'm not saying  
3 preponderance of the evidence, I am going to go all the way.  
4 And that's why I ask the Court to allow me to call witnesses, to  
5 allow me to bring evidence as it said in 242 § (f)(b)(2) (ph),  
6 yes? That person be allowed to present witnesses, to  
7 cross-examining witness, to bring information and evidence, so  
8 that's why I want to do it because I know that that's the  
9 Government position.

10           And at the end of the day, if we accept the  
11 Government's position, number one, we are dangerous, this is the  
12 number one, you already dangerous, you already flight risk, now  
13 let's move to the conditions, I feel that I didn't have my day  
14 in court, I didn't have my bail hearing, and just the simple  
15 language on the statute, in 342 (ph), says clearly that upon a  
16 person is being arrested, the Court should first of all  
17 determine if the person is a flight risk or is dangerous or is  
18 necessary to any conditions.

19           I believe I can prove that I should be released, I  
20 should be released under B, under section B, under B, in  
21 recognition (inaudible) and whatever condition that I will not  
22 violate any, violate any federal, state law or whatever, any  
23 violation of the law. That's what I believe I am -- my category  
24 is. And I can prove it. I can prove that there's no any  
25 concern, there cannot be simply any concern.

1           And this is not -- this is very unusual. You will  
2 very rarely find a case that the defendant can prove and will be  
3 ready to prove at the bail stage that on the face, on the face  
4 of the charges, not going -- I'm not asking for a mini-trial, I  
5 know, I know Congress didn't want that bail hearings should be a  
6 mini-trial, I know that, I'm not asking for that, but I'm  
7 asking, simply, to be able to exercise my rights according to  
8 the Bail Reform Act to prove that I'm not dangerous and not a  
9 flight risk.

10           If the Court wants, intends, to give us no choice but  
11 to accept those conditions, then, of course, I have no choice  
12 but go all over again from the beginning and let's make a whole  
13 hearing, let me bring witnesses, let me prove me, let me  
14 prove -- and then if I'm not winning here, I am going to appeal  
15 it and I am going to Second Circuit. I have no doubt that by  
16 Second Circuit, after 33 months, after all the proven evidence  
17 on the face of no dangerous, no flight risk, on the condition  
18 that restricting, restricting your religious association?

19           I mean, tell me when in history any judge or any  
20 government prosecutor asks for a person, that you can be  
21 released, but you cannot talk to your church, you can't talk to  
22 anyone, go find another church, go find another -- change your  
23 religion. What do you mean? This is my religion. I grew up in  
24 this -- I'm twenty years old -- twenty-eight years old.  
25 Twenty-eight years I grew up in this religion. I know no other

1 religion. Those are my rabbis, those are -- I mean, so that's  
2 why I assume that the Government simply want to assimilate me,  
3 they want me to force me to change my religion. That's why  
4 Matityau Malka filed in docket 380, in the docket I cited to the  
5 Court, saying that he feels the Government wants to assimilate  
6 him. What is the reason for that condition?

7 I mean, Lev Tahor is a community of 350 men, women,  
8 and children. They're a peaceful community. They have nothing  
9 to do with crimes. Because the Government selected ten people  
10 or eight people and charged them with, with, with, with certain  
11 kind of offenses, that's why all men, women, children, they all  
12 criminals? And they all are -- so what is the logicalness of  
13 this condition beside of the dehumanize the community?

14 THE COURT: Okay, Mr. Malka, I'm not going to get into  
15 a whole back-and-forth with you about what the Government is or  
16 isn't attempting to do. I just want to focus on a couple of  
17 factual inaccuracies in what you've just said.

18 The condition that the Government has proposed with  
19 respect to contact with Lev Tahor does not forbid all contact  
20 with Lev Tahor. It is a condition that requires limitations,  
21 but it does not completely forbid all contact, so that's just  
22 not accurate.

23 As to the question of whether you want to appeal  
24 whatever happens here today, that's your right to do and Judge  
25 Román can evaluate that at the appropriate time. What makes

1 sense to me from a practical standpoint, given that it is April  
2 19th, 2022, and that you have a trial scheduled for May 18th,  
3 2022, is to focus on the question of whether there are  
4 conditions that could allow for you to be released promptly,  
5 promptly, meaning before the trial, so that you could be  
6 released on bond, subject to conditions, as you prepare for the  
7 trial. An appellate process is going to take far longer than  
8 that to play itself out, so, you know, there is a practical  
9 consideration here based on the timing of everything given that  
10 we're on the eve of the trial.

11           As far as the question of calling witnesses and you  
12 proving that you're not a danger to the community or a flight  
13 risk, I will give you some leeway to talk about that by way of a  
14 proffer today, especially since it's your first bail hearing,  
15 but the Court has -- it's clear from case law that the Court has  
16 discretion to limit the scope of what is and is not permissible  
17 at a bail hearing in order to focus the inquiry on the questions  
18 that are most relevant for that bail hearing.

19           And you may say that what you're proposing to do is  
20 not a mini-trial, but I have a different view of that. The idea  
21 that you would call a whole slew of witnesses in an effort to  
22 prove that you are not a risk of flight or a danger to the  
23 community, that strikes me very much as what you will have an  
24 opportunity to do at your trial next month, so we are not going  
25 to have a parade of witnesses come in here for you to attempt to

1 prove somehow that you are not a risk of flight or a danger to  
2 the community, because the Government is not going to stand here  
3 and put up all of its witnesses to try to prove the contrary,  
4 nor is it required to. It is permitted under Second Circuit  
5 precedent to proceed at a bail hearing by way of proffer and you  
6 can do the same.

7           So I will give you a little bit of latitude to talk  
8 about that, we're not going to spend all day doing it, but I  
9 will give you some flexibility to talk about those arguments you  
10 believe I should consider to evaluate whether you are or not --  
11 your release would or would not pose a risk of non-appearance or  
12 danger to the community. I will come back to you in a moment.

13           I want to turn to your cousin Mr. Matityau Malka,  
14 because I believe in certain respects, you're a little bit  
15 differently situated to Mordechai Malka only because you've been  
16 here before, not with me, but with Judge Román and Judge  
17 McCarthy, and have sort of gone through this exercise of making  
18 various arguments at bail hearings and seeing the Government's  
19 position with respect to bail or detention and going forward.

20           One of the elements of the Government's submission  
21 that I did read, closely, was the transcript of your last  
22 hearing with Judge Román where you through the assistance of an  
23 interpreter read a letter that you had written to the Court and  
24 then there was some colloquy about what that meant or didn't  
25 mean, and Judge Román ultimately determined that based on what

1 you had said at that proceeding, he felt that you had indicated  
2 an unwillingness to abide by the conditions of release that were  
3 being contemplated.

4           There was some colloquy toward the end of that  
5 proceeding where you seemed to be trying to suggest otherwise,  
6 and in advance of the proceeding today, Mr. Vita, in  
7 communicating with the Court, specifically with Ms. Brown, my  
8 courtroom deputy, about scheduling this proceeding, indicated  
9 that one change in circumstances with respect to you was that  
10 you had expressed to him and were prepared to express to the  
11 Court views that were not necessarily exactly the same as what  
12 you had expressed previously to Judge Román. That application  
13 or that communication was not in any way a violation of  
14 attorney/client privilege or anything of that nature because it  
15 was provided by Mr. Vita as an explanation for what  
16 circumstances had changed to justify an additional or new bail  
17 application on your behalf.

18           And so I want to give you an opportunity, Mr. Malka,  
19 and, again, for the record, this is Matityau Malka, to share  
20 your thoughts on where we are from the perspective of your  
21 potential release today.

22           MR. MATITYAU MALKA: Thank you very much, your Honor.

23           THE COURT: Mr. Malka, could you just put the  
24 microphone a little lower so you're speaking into it.

25           MR. MATITYAU MALKA: Thank you very much, your Honor,

1 and...as the Court just mentioned now that by my previous bail  
2 hearing by Judge Román, it was some kind of a language that I  
3 will not or I'm not willingly ready now to obeying the orders  
4 that the Court will impose on me. This was, this was not so  
5 clear like that, because when I was just ask permission from  
6 Judge Román to read a three-page letter through the interpreter,  
7 before I just start to read this document, I mention to the  
8 Court very clearly that I have a lot of other notes that I was  
9 prepared to mention to the Court with that.

10 THE COURT: Okay, Mr. Malka, we don't have to rehash  
11 the history of what happened back in October. Let's just  
12 fast-forward to where we are today.

13 MR. MATITYAU MALKA: Yes.

14 So as of today, I want to make sure that -- for the  
15 Court that every condition that the Court will impose on my  
16 behalf and this condition will not distract my freedom of  
17 religion and not, and not to -- and this will not be like the  
18 condition that I will not be allowed to talk to my, to my  
19 community that I was growing up the last thirty years there, and  
20 beside of that, I can say that almost seventy percents {sic} or  
21 even more of this whole community is my close family, and now  
22 that I am providing a list to the Government and by getting  
23 permission from the Government to whom I'm allowed to talk or to  
24 whom I'm not allowed to talk from my own religion, that I don't  
25 have any other religion, I'm growing up in my previous thirty

1 years and my whole family is there, so now by getting permission  
2 from the Government, I'm allowed to talk to them and not to them  
3 and not to them, this is a peaceful community and all the  
4 allegations that the Government were -- just did about --  
5 against our community, that it's, it's...that it's a very  
6 dangerous community and all kind of allegations similar like  
7 that, it...everything is just based on newspapers or on other  
8 or...in -- because nothing was proved that our community is a  
9 dangerous community, that the only condition that even I already  
10 sit way more than that time, I was been arrested on March 2019  
11 and now already more than three years that I'm incarcerated in  
12 the maximum of my -- in the maximum of the charge that I have,  
13 it's three years, let alone the good time and all, and all other  
14 things around that, but I already did almost over 37 months in  
15 jail and, and, and now, and, and, now, if I want to just -- to  
16 be released, but just this condition, it's could not ensuring my  
17 appearance to Court, is could not make any sense that it is  
18 right because my trial is in a month from now.

19           So if there -- if the Government just want ensure for  
20 the Court that I will not flee from the country, to make sure  
21 that I will show up in a day in court, I don't believe that  
22 there is any human being believe like that if somebody have a  
23 court in a month from now and the maximum he could serve is  
24 three years, so what is the reason to flee and leave the  
25 country? If I already did my time, just to get another five



1 years or another year for contempt court and for other  
2 violations around that? It doesn't make even one percent sense  
3 that even I'm a flight risk, because I already did my time.

4           And I'm able and I want to obey every condition that  
5 the Court will impose on me, even there is a lot of conditions  
6 here that it's (inaudible) usually other defendants, and I am  
7 not saying that it's necessary, but I will agree to, agree to  
8 all of this...basically all of this conditions now I will obey  
9 it, but just this condition, not to talk to...so the only  
10 condition, the issue is here, like, two, three conditions, but  
11 basically the conditions is around restrictions about the  
12 contact with Lev Tahor, my own community.

13           And the same thing is with my, with my co-defendants  
14 that especially that -- especially of this co-defendants that  
15 some of them are my rabbi, other are my teachers, and I don't  
16 have any other, any other religion, even if I get to be  
17 released, but just to study my religious needs, to study the  
18 bible, to study everything, so I don't have a problem to talk  
19 just on the phone and everything will be monitored, everything  
20 will be sent directly -- every phone call directly to my standby  
21 counsel and just to have limited computer with limited internet,  
22 I don't have any problem with that, but even I don't see that  
23 it's necessary, but focused on this condition with Lev Tahor.

24           The other condition is very important is that I cannot  
25 understand whether this condition about I shall consent of

1 uninstructed {sic} search of my phone and laptop. I understand  
2 for uninstructed inspecting search in the, in the house where I  
3 will be sitting, so this is I understand, but what is the reason  
4 about to have an uninspected {sic} search for phone and laptop?

5 Especially I am proceeding pro se, so I have a lot, a  
6 lot of privileged notes and correspondence with my standby  
7 counsel and a lot of draft notes that I just starting and  
8 witnesses statements that I'm looking through that and other  
9 stuff that I'm not ready to handle {sic} it over to the  
10 Government as of now, and it's not make any sense, even a  
11 little, that the Government would be able -- the same way the  
12 Government could not break in in another attorney's office and  
13 take privileged stuff from, from, from, from an attorney.

14 I am not an attorney, but still I'm proceeding pro se,  
15 and all my notes is there and I have a lot of statements from  
16 different witnesses and also correspondence, private  
17 correspondence between me and Mr. Vita, and just this week, I  
18 cannot understand it make any sense of whether they have  
19 probable cause or if there is some -- unless they get a order  
20 from a judge so that is something, something is a little  
21 difference, but just uninstructed search is not making any sense  
22 for this.

23 THE COURT: Okay. I understand your point, Mr. Malka.

24 Mr. Ligtenberg, why don't you address a couple of  
25 those points, one with respect to the unscheduled inspection of

1 the phone and laptop.

2 I mean, the point that Mr. Malka raises regarding  
3 privilege is a valid point. I imagine that the Government would  
4 have ways of potentially conducting those searches that would  
5 guard against those valid concerns that Mr. Malka has raised, so  
6 I'd like to hear your position on that.

7 And then with respect to the contact conditions, 7 and  
8 8 in your letter, I'd like you to address the extent to which  
9 those conditions are contemplated for danger-to-the-community  
10 purposes as opposed to risk-of-flight purposes, because, again,  
11 I do think Mr. Malka raises a valid point with respect to risk  
12 of flight.

13 It's not to say that there's no risk of flight given,  
14 you know, various factors that have been laid out, including  
15 both Mr. Malkas's strong ties to, to foreign countries and  
16 comparatively more limited ties to the United States, but, you  
17 know, the Government often makes arguments with respect to  
18 flight risk based on the anticipated sentence being significant,  
19 and it seems here that the mirror image of that has to be  
20 considered and I think the Government has considered it to some  
21 extent, meaning that the potential sentencing exposure for these  
22 defendants after all this time is small, so Mr. Malka raises a  
23 reasonable point with respect to perhaps that counseling against  
24 a risk of flight or at least limiting the risk of flight in  
25 certain ways.

1           So if you could address those two points, Mr.  
2 Ligtenberg.

3           MR. LIGTENBERG: Yes, your Honor. Well, I'll start  
4 with the last point, and I'd like to just correct for the record  
5 something that the defendant said. There is not a three-year  
6 maximum sentence. That is simply incorrect.

7           THE COURT: Okay, I understand -- and just be clear, I  
8 understood from prior filings and prior arguments in this case  
9 that the Government's position is that potential sentencing  
10 guidelines range, at least for Matityau Malka, would be 46 to 57  
11 months.

12           MR. LIGTENBERG: That's correct.

13           THE COURT: That's something I read somewhere in one  
14 of the many submissions.

15           MR. LIGTENBERG: Correct, your Honor.

16           THE COURT: Of course, the parties can always dispute  
17 what the sentencing guidelines range is ultimately, but my  
18 understanding has been that that's the Government's position, 46  
19 to 57 months, based on what it knows now.

20           MR. LIGTENBERG: Correct, your Honor, and for  
21 Matityau, the maximum would be eight years, for Mordechay, the  
22 maximum would be eleven years, and, yes, the Government believes  
23 the guideline for both would be 46 to 57 months, well above the  
24 amount of time that either of them have served.

25           I would also note that some of those enhancements that

1 are built into that calculation are enhancements that Judge  
2 Román already applied to their co-defendants in the prior trial,  
3 and some of them are victim-specific, not defendant-specific,  
4 for instance, the vulnerable victim enhancement, so I do think  
5 that that is the appropriate guidelines range.

6 THE COURT: Okay, but, I mean, the defendants have  
7 served upwards of 36 months in custody. Or served. I mean,  
8 they've been in custody for upwards of 36 months.

9 MR. LIGTENBERG: I believe that's true for Matityau.  
10 I think Mordechay, it's shorter, closer to 33 --

11 THE COURT: Okay.

12 MR. LIGTENBERG: -- but, yes, they've been  
13 incarcerated for a long time, and as your Honor noted, this is  
14 why we're trying to make an effort...to get them out.

15 THE COURT: I understand, but to that point, I mean,  
16 if this were a case where you were coming in and saying that the  
17 potential sentencing exposure for a newly-arrested defendant  
18 were based on a guideline range, in Matityau Malka's case,  
19 between 10 and 20 months or -- if I have the math right, it's  
20 unlikely that you would be arguing, in fact, I'm sure you  
21 wouldn't be arguing, that there would be a risk of flight based  
22 on the sentencing. You might have other arguments for risk of  
23 flight, but you certainly wouldn't be arguing that based on the  
24 sentencing exposure.

25 MR. LIGTENBERG: I think it's absolutely a factor your

1 Honor can consider, but I think there are so many other factors  
2 that show a risk of flight here, and there is an incentive the  
3 to flee. I do think there is a substantial likelihood that  
4 following a trial that they would be looking at additional jail  
5 time.

6 THE COURT: Look, I am not suggesting that there is --  
7 that the sentencing issues are dispositive on this question one  
8 way or the other. It's just that I think you would acknowledge  
9 that in certain respects, those issues, theoretically at least,  
10 diminish the risk of flight. They don't entirely remove the  
11 risk of flight, but I think there is a degree to which it does  
12 diminish the risk of flight. You don't have to agree with that,  
13 that's what I think, but let's talk about the, the  
14 contact-limitation conditions, because Mr. Matityau Malka just  
15 addressed that more in the context of risk of flight.

16 While I understand that that is a component of the  
17 Government's argument in the sense that communication with  
18 individuals who are abroad could potentially facilitate one's  
19 flight from the United States, I also understood that there was  
20 a component of that argument that also had to do with danger to  
21 the community, which was not addressed as part of Mr. Matityau  
22 Malka's presentation just now.

23 MR. LIGTENBERG: Absolutely, your Honor.

24 THE COURT: Okay, so if you'd address that on the  
25 record, I'd appreciate it.

1 MR. LIGTENBERG: As your Honor saw in the indictment,  
2 as we laid out in our letter, this isn't just one attempt to  
3 take these children outside the U.S. This is three separate  
4 attempts, including most recently about a year ago in March 2021  
5 by another member of Lev Tahor who has not been arrested. There  
6 are various members of Lev Tahor, including the defendants, who  
7 have expressed their commitment to getting these kids back to  
8 Lev Tahor, to getting them out of the country.

9 These defendants acted at the command of the leaders,  
10 Nachman Helbrans and Mayer Rosner. In various filings  
11 throughout this case, all of the defendants have made clear  
12 their dedication to getting these kids away from their mother.  
13 They think that, really, they haven't done anything wrong and  
14 that they have every right to do it and they have worked at the  
15 direction of these leaders. Allowing them to have contact with  
16 these leaders and with other leaders, unsupervised, without  
17 standby counsel there, with certain leaders is -- absolutely  
18 poses a danger to the community, given the history of this case  
19 of people -- lower-level people in Lev Tahor at the bidding of  
20 more senior people trying to carry out these kidnappings, and  
21 that's particularly the case given Lev Tahor's sizeable contacts  
22 overseas, their demonstrated ability and the conduct here to get  
23 out of the country, in many cases completely undetected, and  
24 their efforts to move the community to places like Iran that are  
25 likely outside the reach of U.S. law enforcement and would

1 successfully take the kids away from their mother forever  
2 potentially if there's no effort.

3           So there are significant risks to allowing sort of  
4 unfettered communication, but we realize they have close friends  
5 and family members and really, that their ties are to Lev Tahor  
6 and not to New York, and that's why we've tried to come up with  
7 a reasonable proposal, which, as we've explained, has worked  
8 with another defendant where, you know, if they want to talk to  
9 their mom, if they want to talk to siblings, close family  
10 members, we're not going to stop them from doing that as long as  
11 it's reasonable, and as I said, the twenty-some people that were  
12 listed by the other co-defendant, we approved every single one  
13 of them.

14           So we're not trying to cut them off from Lev Tahor,  
15 we're not trying to jam them up unnecessarily, I think we're  
16 trying very hard to create a circumstance where they can get out  
17 under sufficient conditions, but, you know, we can't agree to  
18 just let them talk to sort of anyone in that community who might  
19 be prodding them to "just go grab the kids and get out of here,"  
20 as has happened multiple times in this case. It's a similar  
21 concern about co-defendants and, as your Honor noted, that is a  
22 very standard condition in these circumstances.

23           THE COURT: All right, and then, Mr. Ligtenberg, on  
24 the point about the request for unscheduled inspection of phone  
25 and laptop.



1 MR. LIGTENBERG: Yeah, my understanding, and maybe  
2 Pre-Trial can step in here, is that, you know, this is a  
3 condition that is imposed, it's imposed in child pornography  
4 cases I believe --

5 THE COURT: Mr. Ligtenberg, I've certainly seen it in  
6 child pornography cases.

7 MR. LIGTENBERG: And --

8 THE COURT: Or something similar.

9 MR. LIGTENBERG: Certainly the Government isn't  
10 seeking to review any privileged documents or communications,  
11 but, you know, we'd be happy to work with Pre-Trial to set up  
12 some sort of mechanism, you know, to ensure that there are no  
13 privileges being broken, but ensure that he's also not using his  
14 phone and computer to try to plan another kidnapping of these  
15 children.

16 THE COURT: No, I understand the purpose of it, Mr.  
17 Ligtenberg, and I guess, Mr. Adams, maybe you could speak to  
18 this briefly.

19 I mean, to the extent that that condition were to be  
20 imposed, would it be that Pre-Trial would conduct those  
21 inspections?

22 OFFICER ADAMS: If those conditions were given by the  
23 Court, we would be doing the inspection, and if we felt there  
24 was some violation, we would notify the Government of those  
25 violations so they could look into it to see if there were

1 actually violations.

2 THE COURT: Okay.

3 OFFICER ADAMS: So it would go from us to the  
4 Prosecution to determine whether if there were actual  
5 violations. We may think it's a violation, but they may not  
6 think it is.

7 THE COURT: Okay, that's helpful, Mr. Adams. Thank  
8 you.

9 And, Mr. Ligtenberg, would it be possible if that  
10 condition were to be implemented to have that evaluation --  
11 well...I'm not sure that it's necessary to have some sort of  
12 separate team involved in it because, again, as I understand it  
13 now and a little bit more clearly, the inspection would be  
14 conducted by Pre-Trial as opposed to by, for example, an agent  
15 of the FBI or whatever investigating agency has been taking the  
16 lead on this matter.

17 I assume it's the FBI.

18 MR. LIGTENBERG: Yes, your Honor.

19 THE COURT: Okay. Nor would it be an investigative  
20 agent from the U.S. Attorney's Office, it's Pre-Trial Services,  
21 which is an agency of the United States Government, yes, but  
22 not...not aligned with the United States Attorney's Office in  
23 the sense of being part of the prosecution team, so it is a  
24 distinction that is not incredibly clear for people who are not  
25 as familiar with the ins and outs of the criminal justice

1 system, I recognize that, but Pre-Trial Services is not working  
2 hand in glove with the United States Attorney's Office to try to  
3 achieve certain prosecutorial goals. Pre-Trial Services has a  
4 role to play in ensuring that whatever conditions are set by the  
5 Court are complied with during the course of a defendant's  
6 release pending trial.

7           Okay, thank you, Mr. Adams, and I'll come back to you  
8 in one second, Mr. Malka.

9           Mr. Ligtenberg, is there anything else that you wanted  
10 to add on any of the questions I've presented so far?

11           MR. LIGTENBERG: No, your Honor.

12           THE COURT: Okay. Let me turn back to Mr. Malka,  
13 Matityau Malka. If you want to take a second to speak with Mr.  
14 Vita, that's fine.

15           (Defendant consults Standby Counsel)

16           THE COURT: All right, I'd like to turn back to you,  
17 Mr. Matityau Malka, if you'd like to address any of the points  
18 that you've just heard from Mr. Ligtenberg, which were designed  
19 to speak to some of the issues that you just raised in your  
20 presentation.

21           MR. MATITYAU MALKA: Yes, your Honor. Thank you very  
22 much.

23           The thing is about the uninspected search of the  
24 computer and laptop, I would like to ask the Court if it's  
25 possible to do such a condition like this as would be that if

1 the Pre-Trial Services, it's possible to, to seek a search  
2 warrant from the Court in based on probable -- based on their  
3 concern why they want to do it. This is one thing. And if this  
4 is not, if this is not a, if this is not a -- if this could not  
5 be done at least before the handling {sic} over the stuff what  
6 they believe it's a violation of condition or something like  
7 this, they should, they should be -- before they send it to the  
8 Government, they should just send it to the Court for a  
9 in-camera review, and then if the Court...this is regarding the  
10 computer and...this is regarding the computer and the laptop.

11 But now I want to make a, now I want to make -- now I  
12 just want to mention to the Court that my last two, three  
13 previous bail hearings, the Government was requesting a  
14 non-secured bond of \$230,000, and now the Government change it  
15 for a secure bond. Even it's hard for me, like I explained  
16 before, but I will obey it, and not just I will obey it, I have  
17 it already ready, I have already a place to live, I have between  
18 five or ten co-signers, how much the Court will impose on me, I  
19 have it ready already, and this is people that are financial and  
20 it's people that where they have businesses in, in their  
21 financial.

22 And, and I just want to, I just want to, I just want  
23 to point out to the Court if there is any other condition in the  
24 whole history that it's could changed the condition of number 7  
25 and 8 regarding the condition about not -- to be limited to talk

1 to my community and to my defendants, so I will be able to agree  
2 every other condition that the Court will impose on me, even  
3 it's very, very hard and it's not usual, but I will take this  
4 instead of this, just because I understand the Government just  
5 mention now that they are not limiting me because I will be able  
6 to talk to my family, my siblings, but the issue here is not  
7 just about talking to my family, my siblings, the issue is, like  
8 I mentioned to the Court before, that this is my, this is my  
9 religion and my religion is not just to talk to my father and my  
10 mother, my wife, my children, my other siblings, the issue is  
11 this is my community, and just -- not just because the  
12 Government decided to pick up from 350, something like this,  
13 men, woman, children, to charge them, it's mean already that the  
14 whole community they are criminals and they are allow now to  
15 single out this community just because that.

16 And also, the Government mentioned earlier what is --  
17 that I was get involved to kidnap those victims, those children  
18 from New York, from the mothers, and there is two things.

19 First of all, I am not charged with them, I'm charged  
20 with attempt, and especially with this, especially it's -- the  
21 only -- the only, the only thing what, what I was -- with what I  
22 was have involved to do with this case is just the handling over  
23 few phones to the minor and that's it and everything was based  
24 on the request of the minor themself, and there is not even one  
25 phone conversation on those phones that was handled over to the

1 minor, not an incoming call, not a outcoming call, nothing from  
2 those phones that I provide for minor one.

3 And it is not in the Government -- and the Government  
4 cannot say that I was getting involved with, with, with even,  
5 even -- I'm saying very clearly on the record that it didn't was  
6 -- that it didn't was here a violation about the Court only  
7 because even when the Family Court, when the Family Court was  
8 issue a temporary order --

9 (Brief interruption)

10 THE COURT: Hold on one second. If you can mute that  
11 again. I'm not sure what happened.

12 (Brief pause)

13 (Off-the-record discussion)

14 THE COURT: All right, Mr. Malka, you can continue.

15 MR. MATITYAU MALKA: Thank you.

16 So the thing is just I was -- there's no any record  
17 how I was involved in any kind of, of kidnapping someone out of  
18 the country, take out of the hand of the mother, even in the  
19 time when the Government was arrest me, so the file was not  
20 served with the papers that the mother had the custody and took  
21 it out from the father, the father was just served the papers  
22 until January 3, so in the time when I was arrested March 26th,  
23 the father was not served and not aware that the mother still  
24 have the custody from -- of the children, but even this is --  
25 even it's could be that a family issue, a Family Court issue,

1 but they're saying that -- the Government saying that I was  
2 violate a Family Court order by doing it, but it's just -- I was  
3 just handle over a phone and there was no any kind of attempt  
4 and it was in front of the mother's house in the middle of the  
5 day, so if I was -- really was want to kidnap, like the  
6 Government has covered, the minors, so who would go in the  
7 middle of the day in front of the mother's house and handle over  
8 a phone for a minor?

9           So there's even not one percent sense to believe that  
10 if somebody approach with -- in, in the middle of the day, in  
11 front of the mother's house, when they can just in one second  
12 call -- contact the police and let them know, so which kind of  
13 attempt for kidnapping is it if it's just the middle of the day?  
14 It is not just in some...some...some plans for -- or I didn't  
15 talk nothing about any plan, just handle over a phone.

16           And the only reason I'm handling over the phone for  
17 her was just she was restricted and not allowed to report the  
18 abuse what Abraham Greenwald with another guy, that his name is  
19 Abraham Itzhak Mertz, and another guy with the name is Joseph  
20 Litchkin, but we have so many records how those guys especially,  
21 especially Abraham Greenwald, was abused this night.

22           And also we have phone conversations, recorded with  
23 consent from the minor, how few days before my arrest and few  
24 days after my arrest, she was trying to report the abuse when  
25 she went over from all those people, and nobody was allow her to

1 report the abuse because they didn't want it the abuse that they  
2 did to be reported.

3           And it's not just that. Two weeks, two weeks before  
4 my arrest, I was at an interview with Detective Booth in...in  
5 Williamsburg, in Brooklyn, and I told him all the abuse was this  
6 minor going through, and he open up the computer from the  
7 station and he saw several of, of phone, of phone calls calling  
8 from the minor in trying to reporting the abuse. And I told him  
9 exactly -- and I ask them, I ask Detective Booth, is this a  
10 violation or I'm doing something wrong by providing her a phone  
11 just to be able to report abuse? He told me no. If the mother  
12 -- if, if, if...there is not -- it is not any kind of overt act  
13 of some kind of kidnapping or just to handle over a phone to be  
14 able to report abuse, there's not such any crime and this is the  
15 only thing.

16           And also, I went willingly with him to report the  
17 abuse and he saw on the record so many abuses what she was --  
18 went through.

19           THE COURT: Okay, Mr. Malka, I'm going to stop you  
20 there.

21           I do understand that you have what you believe to be a  
22 meritorious defense to this case. I understand that. The  
23 Government obviously has a very different view of the  
24 significance of all of this. That's why the prosecution has  
25 continued, other co-defendants of yours were convicted already.



1 That doesn't mean that you are necessarily going to be  
2 convicted, you have the presumption of innocence, but there's a  
3 lot to this case. When I said that we were not going to have an  
4 extended colloquy about all of this today, that is partly what I  
5 meant, but I appreciate everything you've shared so far.

6           Let me ask you, before I turn back to your cousin, I  
7 do understand that there are particular conditions that the  
8 Government has proposed that are objectionable to you and I will  
9 make a final determination on those when we wrap up this  
10 proceeding, but this is a critical question and it was where you  
11 were tripped up, clearly, in the last proceeding before Judge  
12 Román, and the question is this.

13           If I were to impose all of the conditions, including  
14 the unscheduled inspection and the limited contact with your  
15 co-defendants and the limited contact with members of Lev Tahor,  
16 if I were to agree with the Government that those conditions  
17 were appropriate and reasonably necessary to ensure your  
18 appearance and the safety of any person and the community, would  
19 you abide by those conditions? Meaning would you follow those  
20 conditions if I were to impose them.

21           (Brief pause)

22           MR. MATITYAU MALKA: I just want to ask the Court the  
23 permission to...

24           THE COURT: Yes, speak to Mr. Vita.

25           I mean, the record should reflect that there was a

1 long pause, several seconds, maybe ten seconds, in response to  
2 that question and Mr. Malka has asked to speak to his standby  
3 counsel, which he certainly should do.

4 (Defendant consults Standby Counsel)

5 MR. MATITYAU MALKA: Yes, your Honor, every condition,  
6 even that is not set up here in this proposal, even though be  
7 very critical and very hard for me, I will obey it and I will  
8 obey every other and each order that the Court will impose on  
9 me.

10 But just what I want, what I want to make clear, that  
11 even about, even about the uninspect -- the uninspect {sic}  
12 search of the computer and laptop, if I don't have any choice,  
13 for sure, I will obey it, if there is no any other choice to do  
14 it in a different way, but the only thing is what I want to  
15 make, please, ask very much the Court, that I already, I already  
16 am in jail here over three years and my wife and my children,  
17 they're ready to come here and to be able to -- in the apartment  
18 where I shall be released. I just want to ask the Court if  
19 there is any other condition in the whole history, even it's  
20 could be \$500,000 personal reconization {sic} with secured bond  
21 or more stricter than that, more co-signers, fine. I'll put on  
22 some properties or other -- any other condition. Even as it be  
23 very hard, I will hundred percent obey it and fully, but just  
24 ask very much the Court that because I want to have the  
25 opportunity to prepare how much it's possible in the last few

1 days before trial that the Court shall release me on -- under  
2 all -- the Court shall try to find every other condition, more  
3 co-signers, more money, or any which other condition, but not a  
4 condition that it will violate my constitutional right, that  
5 this is violate that I don't have -- that I could not talk to my  
6 community and just within the (inaudible) and just permission  
7 especially that I mentioned, that I don't have a problem to talk  
8 with just one phone, a recorded phone, directly to the, directly  
9 to my standby counsel or directly even to the Pre-Trial  
10 Services, but -- and everything should be recorded.

11           So if there is any issue that I could get in touched  
12 {sic} with somebody to do any crime that I'm not -- I will not  
13 do it, but even though some kind of concern about that,  
14 everything is recorded, a second after the phone conversation,  
15 everything is sent to Pre-Trial or to standby counsel, but --  
16 so, so...I really asking the Court to -- please, to find any  
17 other condition to avoid this condition and I will obey  
18 everything in full what the Court will impose on me.

19           THE COURT: Okay. Thank you, Mr. Malka. Just give me  
20 one second.

21           Ms. Brown...

22           (Off-the-record discussion)

23           (Brief recess)

24           THE COURT: I'd like to turn now to Mr. Mordechay  
25 Malka and give you an opportunity to address some of the points

1 you referenced earlier with respect to risk of flight and danger  
2 to the community on your own behalf.

3 MR. MORDECHAY MALKA: Thank you, Your Honor.

4 As I said just earlier, I feel that in order for me --  
5 I mean, after, like, all of the nine pages that the Government  
6 produced, after all the negativity and allegations in the  
7 indictment that the Court told me, the Court had the opportunity  
8 to review it, after all -- after what they just mentioned here  
9 on record, maybe it's not ordinary, maybe not all cases is  
10 asking to have those kind of bail hearings, but I believe in my  
11 case, after -- to disprove what the Government says, I mean,  
12 they mention nine pages, I mean, many of -- many...things that I  
13 know the Court will take this in consideration to decide if we  
14 are flight risk or dangerous to the community, so to disprove  
15 what they said and to prove what I want to prove, what is the  
16 truth, what, what is the facts according to the all factors to  
17 be considered in sub-section G, limited, I understand -- again,  
18 I'm not trying to make it a mini-trial, but if the, if the  
19 statute mention this, not I, I mean the statute mention it, a  
20 defendant should have an opportunity to provide witnesses and  
21 evidence and cross-examining witnesses.

22 So that's...unless the Court tell me different I don't  
23 think so, I will say as I know. I'm not a lawyer, I'm not -- I  
24 never really practice law --

25 THE COURT: Right, but you've chosen to represent

1 yourself in this case, so --

2 MR. MORDECHAY MALKA: Yes.

3 THE COURT: -- so the I'm-not-a-lawyer explanation is  
4 really not adequate. It's your choice to be here representing  
5 yourself, so it is a choice you have to live with.

6 MR. MORDECHAY MALKA: No, but what I say is -- what I  
7 want to say is, I can say what statute say, but if the actual  
8 law is different and there is no such right to bring -- to  
9 provide witnesses and evidence at a hearing, then the Court can  
10 tell me and I will accept it whatever the Court say because the  
11 Court know the law, I don't -- the Court do know. I may have --

12 THE COURT: What I have said is there is a certain  
13 amount of discretion that courts have with respect to what  
14 evidence can and can't be presented at a bail hearing, and I  
15 have not heard you explain to me any reason why witnesses are  
16 necessary to address the issues in this case for purposes of a  
17 bail hearing. At trial, you'll have an opportunity to confront  
18 and cross-examine the witnesses against you. For purposes of  
19 the bail hearing, particularly when there is a proposed package  
20 for release and particularly given the timing and logistical  
21 circumstances here, I am asking you to explain to me what you  
22 expect those witnesses would say that would include the Court's  
23 evaluation of the factors involved for a bail determination, so  
24 just tell me what you think the witnesses would say.

25 I gather from what Matityau Malka has said, one of the

1 witnesses you propose to call here is the victim in this case --  
2 one of the victims in this case. I have never once heard of a  
3 scenario where a defendant at a bail hearing calls the alleged  
4 victim in a case as part of the bail hearing. I -- that might  
5 very well be unprecedented and I -- that seems problematic on so  
6 many levels that I can't even begin to list all of them.

7           You seem to think that the victim in this case will  
8 somehow vindicate your defense and demonstrate that you are  
9 not...a danger to the community or a risk of flight. It's not  
10 really -- I'm not sure what your basis for that conclusion is,  
11 but that is what you anticipate you might elicit from the victim  
12 in this case if you were able to call one or both of them to  
13 testify.

14           That is one of the points you want to raise, correct?  
15 Yes? You're nodding your head.

16           MR. MORDECHAY MALKA: Yes, your Honor.

17           THE COURT: Okay.

18           You also indicated in your submission that you wanted  
19 to call certain individuals from the jail? I'm not sure if  
20 those were meant to be other defendants or jail employees, to  
21 testify on your behalf about how you have been compliant with  
22 conditions at the jail. Is that correct?

23           MR. MORDECHAY MALKA: Yeah, it was a co-conspirator --

24           THE COURT: Co-conspirator.

25           MR. MORDECHAY MALKA: And the chaplain, the Jewish

1 chaplain, at the jail. Yeah, both. A rabbi.

2 THE COURT: Okay. It's not clear to me how good  
3 conduct at the jail has any basis one way or the other on the  
4 questions that are relevant for the Court's determination at a  
5 bail hearing whether you would be a danger to the community or  
6 risk of flight. Certainly if you're in jail, you're not a risk  
7 of flight. That's the definition of jail.

8 And the danger-to-the-community prong, because you --  
9 even if you were completely compliant with all jail rules and  
10 regulations, I'm glad to hear that, that is certainly a good  
11 thing, but it doesn't necessarily shed much light on whether you  
12 would or would not be a risk of flight or a danger to the  
13 community if you were released, so I don't think there's any  
14 need to have witnesses testify as to those points.

15 It wasn't entirely clear what the third category of  
16 witness that you were seeking to call was because it was -- the  
17 name was redacted from the submission.

18 What was the third category?

19 MR. MORDECHAY MALKA: It was another co-conspire --  
20 alleged co-conspirator, yeah.

21 THE COURT: Okay. So you propose to call witnesses  
22 who were alleged co-conspirators in the case to offer testimony  
23 on your behalf as to why you if you were released would not be a  
24 risk of flight or a danger to the community. That is on its  
25 face not especially persuasive.

1 Now, that may ultimately be useful testimony for you  
2 at trial, for the defense that you are seeking to put forward,  
3 and I won't be there at the trial, you can proceed in whatever  
4 way Judge Román authorizes and that is consistent with the  
5 Federal Rules of Civil Procedure, but I don't see the need for  
6 testimony from any of those witnesses to address the specific  
7 inquiries that are before me at today's hearing.

8 If you'd like to tell me in your own words a bit more,  
9 as Mr. Matityau Malka did a few minutes ago, about why you  
10 believe that you are not a danger to the community or would not  
11 be a danger to the community if released or pose any risk of  
12 flight, you should go ahead and do that, but I don't -- nothing  
13 that has been said here today convinces me that there is a need  
14 to present witnesses for purposes of my evaluation at this bail  
15 hearing.

16 MR. MORDECHAY MALKA: Thank you, Your Honor.

17 THE COURT: Okay.

18 MR. MORDECHAY MALKA: So I will do what you propose me  
19 to do, to go on and try to lay out -- at least start to lay out  
20 my arguments and hopefully that in some way to be enough for the  
21 Court to, to convince the Court that I'm not dangerous.  
22 However, I want to pinpoint one point the Court just said, and  
23 this is a very -- I'm very glad the Court said this.

24 The Court said that the Court had never -- the Court  
25 never had such a case like -- that someone calling the victim to



1 testify on his bail hearing so he should be released, so this is  
2 true, this is true, I know. This is -- and most cases, I mean,  
3 99.99 percent of the cases, the victims will testify the  
4 opposite, they will say that person hurt me or tried, whatever,  
5 to -- that -- to, to, to, to kill me or whatever, robber {sic}  
6 me or whatever, he should stay in jail, he is dangerous to me,  
7 but this factor that the Court just said indicate to me that the  
8 Court had never had the chance to hear anything clearly from our  
9 side, and this is clear. The Court is right.

10 After reading the Government's nine-page position,  
11 after hearing the Government's on, on, on...whatever --

12 THE COURT: Just to be clear, as I said at the  
13 beginning, you submitted 400 pages of materials. I read a lot  
14 of them, not all of them, but it's not accurate that I haven't  
15 seen any of what you've provided on, on what you describe as  
16 your side of the case. That's just not accurate.

17 You can continue.

18 MR. MORDECHAY MALKA: Yeah, your Honor, by the way, I  
19 hope the Court realize that whatever was submitted was not the  
20 main point of my motion. For some reason, my lawyer wasn't able  
21 to upload, some of them was with redacted information, and  
22 therefore I will say maybe my most important material did not  
23 went on, on the docket, so -- but anyway, this factor that the  
24 victim -- that why we say, why I want to call the victim and --  
25 it, it, it stands alone to show and to support our argument that

1 there's no dangerous at all to the very same victim.

2           There was never -- yes, when the Government say  
3 thirty-five times kidnapping, kidnapping, kidnapping,  
4 kidnapping, kidnapping, kidnapping, again and again, twenty  
5 times victim, victim, victim, victim, victims, everyone thinks  
6 that this is, whatever, this is a kidnapping, this is a victim,  
7 right? But when the Court will hear my test -- my arguments, my  
8 evidence, my witnesses, the Court will find out totally  
9 different picture, 180-degree different. The Court will find  
10 out that there was no kidnapping at all, there was no victim at  
11 all, there was no any concern about the well-being of the  
12 children or any, any, any factor that might be found by anyone  
13 that there was such victim here, totally the opposite. The  
14 Court will find, with my evidence, that the defendants only  
15 acted in effort to help this...children. The children cry for  
16 help; we tried to help them. We tried to provide humanitarian  
17 help for a child.

18           Your Honor, I know you never had such a case, but this  
19 is not an ordinary case. That's why I'm saying, your Honor,  
20 that's what -- we never had a chance. The defendants during the  
21 three years of this proceeding have never had a chance, once, to  
22 present their side of the case.

23           Yes, there was a trial. I'm not going to go into that  
24 because the Court is not -- it's a different judge, I'm not  
25 going to go into that, but, in fact, if the Court will check the

1 record, you'll see the defendant was removed -- their pro se  
2 right was removed right, right before the trial on the day when  
3 the trial begin, so their lawyers didn't present their side at  
4 all and -- but anyway, this will go up to appeal.

5           Now, when the Court and unfortunately the Government  
6 is, is putting us in a position where we cannot present, if we  
7 cannot prove what we want to prove, right? There will always  
8 will be victim, you will always will be -- you will always say  
9 dangerous because you cannot prove different, but if the Court  
10 will allow me to prove it, I will prove it. And your Honor,  
11 this is not my evidence I gonna, I gonna pull up from whatever.  
12 This obvious evidence on the -- from the Government's own  
13 discovery, your Honor. There is many recordings from, from the  
14 very same victim, so-called victim, where she's pledding {sic}  
15 for help. Your Honor, you have to be...any reasonable person  
16 who see those evidence will understand, that this case can never  
17 be dangerous, you can never be dangerous to the very same  
18 victim.

19           Let me give you just one example, a simple example.

20           Someone, whatever, a, a, a -- someone's get caught for  
21 shoplifting, some kind of burglary, and he's calling his  
22 friend -- he's in the police car, he's calling his friend and  
23 saying, oh, I am here, I got caught, can you help me. He say,  
24 oh, what can I help you. I don't know, come here. So he came.  
25 He tell the police, look, just open me the door so I can go

1 away. He opens the door of the car and he runs away with him.  
2 Tomorrow, this person get charged. At the hearing, the  
3 Government says that he's dangerous to the community. Why is he  
4 dangerous? To whom is he dangerous? He dangerous to the person  
5 that he helped, to him he's dangerous, and he's a victim of who?  
6 He's a victim of him, of the rescued person.

7 I mean, this might be illegal, it might be a criminal  
8 contact, but you can never say this is a victim, you can never  
9 say he dangerous to the very same victim. You can say he's  
10 dangerous to other people because, whatever, maybe he can help  
11 other criminals to escape, but it's maliciously -- the  
12 fundamental is malicious to say that this is -- that he's a  
13 victim of him and he is simply whatever -- or try to call that  
14 he just kidnapped him, he kidnapped this person and whatever.

15 I mean, this is totally different story, your Honor.  
16 This is not -- there's no even -- it's not even -- it's not a  
17 close call. It's not at all. There's no -- all the evidence  
18 will show the difference, show you that there's no victim, no --  
19 and that's why, of course, definitely is the -- your Honor, the  
20 mother of the minors also so-called victim because when a  
21 parental kidnapping, the victim should be -- my lawyer help me  
22 to write at least a motion to the Court where she argue that in  
23 this case, the victim should be the mom, not the children,  
24 because it's parental kidnapping, but anyway...

25 So the mom of the children, the mother, the one that

1 work for the Government and came testify for the Government at  
2 the last trial, she wrote a letter to the Court last month for  
3 the sentencing and she said the incarceration of the defendants  
4 is damaging and is causing pain to -- and suffering to me and my  
5 children. My incarceration is the biggest tragedy for the  
6 victim. When the victim will stand here, she will cry to the  
7 Court "let them out, they helped me, they didn't kidnap me, I'm  
8 not dangerous to them, they not dangerous to me, why are they in  
9 jail, I don't understand," from first day.

10           Your Honor, there's a video, that I ask to play  
11 videos, I will give you one example, there's a video interview  
12 that the Government interviewed the victim. It was January 9th,  
13 2019. Just right after they brought back the alleged victims  
14 from Mexico, and I will go into that, how the victims try to  
15 fight with them not to come back here. They knew that they  
16 gonna be abused here, they knew that they were rescued, but the  
17 Government force them back and assure the continue abuse here.  
18 Why? Because they gotta win the case. Or because they gotta  
19 destroy the Lev Tahor community, but we'll get to that later.

20           So in this individual, this is the first -- the first  
21 that we got it, probably there were other interviews, we did not  
22 get most of the discovery that they should got -- they should  
23 give us, we didn't got it, as many violation that they're doing  
24 in this case. It's also, by the way, a factor of the length of  
25 the detention. We'll get to that later.

1           In this video, the minor, the, the, the FBI agent is  
2 questioning her what happened, what is going on, why did you  
3 went to Mexico, why are they arrested. They're asking her. So  
4 he responding, oh, because they help me. So they say, what, did  
5 they help you? He say, yes, I asked them to help me, to help  
6 me, that's why. And then what he say? Can I please go visit  
7 them in jail, I want to talk to them, I want to talk to them,  
8 they are my people, I want to go -- I want to talk with them,  
9 why can I not talk with him. Your Honor, have you ever find a  
10 victim to say this? Never. Not -- this is totally, totally  
11 different case. It's not the only -- it's not the usual case.

12           This is a case of pure religious persecution. There's  
13 no any logic in this case, and the Government knows that. This  
14 defendant is from whom? From them. Not from me, your Honor,  
15 from the Government, and there's hundreds of hundreds of pieces  
16 of evidence like this available in discovery. The Government  
17 knows it, and there's many more that the Government doesn't  
18 know.

19           There's a recording where the girl talked to a friend  
20 two days after Matityau was arrested, two days, and she's  
21 telling the friend -- and the Government has it, this is Goldie  
22 Rosner, the friend, the Government know what I'm talking. If  
23 they want to know. So this -- so the minor saying to her friend  
24 "do you know what I went through here, you can't imagine what I  
25 went through here. I went through fifteen times hell." Where?

1 Where did she went through? By us? No, by the Government. Not  
2 by the defendants, by the Government. In other words, she's a  
3 victim, but from the Government, not from us. Totally different  
4 story. There's so many proven evidence.

5           It's course, of course, the minor will testify in our  
6 favor, no doubt about it. In the trial, in the trial, the minor  
7 testified and said that she asked us to help her and she didn't  
8 want to be here and she was blocked here by force. Your Honor,  
9 the Government say kidnapping, kidnapping? When there's no any  
10 sense of kidnapping, any sense of kidnapping, anything. There's  
11 no any, any reason why they should call kidnapping. Helping a  
12 child to run away from abuse is kidnapping?

13           I mean -- and the Government's saying that when they  
14 know, they know, that the children are not from here, the  
15 children lived in Guatemala for many years. Just a few weeks  
16 before the alleged kidnappings, the Government, the U.S.  
17 Government -- I don't say the Prosecution Office because it  
18 wasn't involved them, but the Government wrote in their  
19 submissions, they say that the mom grab the children, so the mom  
20 kidnap those children from Guatemala by force, by force. The  
21 minor testified in trial that she was blocked here by force  
22 against her will. Not the five-year-old child, a  
23 fourteen-year-old young woman. Poor woman, she was brought here  
24 by force. And abused and tortured here. Everything why, why?  
25 Because you gotta change your religion. You Lev Tahor? You

1 gotta be assimilated. Okay, you gotta change your religion and  
2 find another religion here? You don't want, you will be force.  
3 We will force you, we will make sure you change your religion.

4           So she was -- they kidnapped the children, they  
5 brought them here by force, the children cried to us for help.  
6 I was not able to sleep at night when I heard the abuse of the  
7 children. I have a recording here also provided by the  
8 Government recently where I am -- it was, like, two, three weeks  
9 before the alleged kidnapping. I am talking to one of the  
10 witnesses I want to call, Aron Rosner, this was the last one the  
11 Court asked me, and I talking to him on the phone and I telling  
12 him what I hear from another co-conspirator, alleged --  
13 everyone's a co-conspirator now, alleged co-conspirator, and I'm  
14 telling him -- I didn't know he were recording me and I'm trying  
15 to tell him, to tell him what the children went through, the  
16 abuse the children went through just the last few days, and I'm  
17 telling him that this co-conspirator that told me, that told me  
18 that -- later on became an informant for the Government, so he  
19 told me, "I won't be able to sleep tonight when I just heard  
20 what the children went through."

21           Your Honor, there's so many -- there's not any piece  
22 of evidence to support a dangerous of flight risk, any piece of  
23 evidence. What is the case about? There's no case at all.

24           Let's say, your Honor, there is such a law that even  
25 if you help a child escape abuse, even if you help a child for



1 humanitarian aid, the law is above everything, and whatever it  
2 was, it was a custody order, you not allowed to do it, leave her  
3 to die, don't help her. Let's say there's a case, let's say I'm  
4 a criminal, I'm the biggest criminal, but dangerous? Where's  
5 dangerous, your Honor? Flight risk? Where's the flight risk?

6           Your Honor, do you know that at the time of my arrest,  
7 I was in Guatemala with my wife and children at home. I was, I  
8 was...confident at home, I didn't -- wasn't fear of any -- of  
9 the Government. I was in Guatemala far away. When I hear that  
10 I'm indicted, right away I took a plane, I came to Guatemala. I  
11 left my children behind, left my wife, left my family. With  
12 tears in my eyes, I get on a plane and came here. Because I  
13 want to be honest. If I am charged, I gonna face it. I wanna  
14 be here in trial. It doesn't matter. And I'm incarcerated  
15 since then. And if the Court think that I'm, I'm feeling bad  
16 about what I did? No, no, I did the right thing. So I came  
17 back, turn myself in for two-and-a-half years. All why? To  
18 face trial. To be able to prove my innocence. And I'm a flight  
19 risk? I am a flight risk? I came here myself. What the  
20 Government's talking about, where the flight risk, what they  
21 talking about, what the heck they talking about?

22           And, your Honor, even more, for the last two years  
23 already, the Government is -- it's not a new thing the  
24 Government said today that they, whatever, the conditions --  
25 they don't post bail, we just need to accept certain conditions.

1 Your Honor, for two years they saying this already.

2 Two years ago in March 20 was a bail hearing of my  
3 co-defendant. At the bail hearing, the Court told him, you can  
4 be released now, right now -- it was Judge Davison -- you can be  
5 released right now, just accept the conditions, the very same  
6 condition the Government just said now. He said, "I can accept  
7 everything, but not talk with my community? I'd rather go back  
8 to jail." He went back to jail for two years, two more years.

9 Can you find another honest person like him? A person  
10 that when he will tell the Court "I'm going to follow the  
11 condition, I'm not gonna run, I'm gonna appear in court, I'm not  
12 gonna do any crime, I'm not gonna kidnap any children," I would  
13 put a million dollars on his word. A person -- this is who we  
14 are. And myself, the Government already at least seven, eight  
15 months saying you can go out, just accept these conditions. I  
16 tell you no, those conditions violating my constitutional  
17 rights, I'm not gonna lose from my community. You want to  
18 dehumanize a Jewish religious community? For why? For what?  
19 What I did wrong? You want to make sure to impose on me such  
20 condition I cannot defend myself? No. So I'd rather stay in  
21 jail.

22 Your Honor, did you find --

23 THE COURT: Mr. Malka, let me interrupt you because  
24 that is a critical point that you've just made.

25 Because if I am not persuaded that...I understand that

1 you have arguments that you've been discussing for the past  
2 fifteen minutes or so that are -- go to the heart of this case,  
3 go to the merits of this case. As I said earlier, you will have  
4 your opportunity, consistent with the Federal Rules of Criminal  
5 Procedure and Judge Román's rulings, to present those arguments  
6 at your trial, but you're getting to kind of the nub of the  
7 issue just there in your last statement, because if I am not  
8 persuaded by your argument that you pose no risk of flight and  
9 no danger to the community, then the question would be, if I  
10 were also then persuaded that in order to ensure your appearance  
11 as required and the safety of any person or the community that I  
12 needed to impose the conditions recommended by the Government, I  
13 have the same questions for you as I had for Mr. Matityau Malka,  
14 who did answer that question ultimately quite directly, and that  
15 is, if I were to impose those conditions, would you comply with  
16 those conditions.

17 MR. MORDECHAY MALKA: Your Honor, I would comply with  
18 even much harder conditions. Even if the Court tell me you  
19 don't talk to anyone in the world, anyone --

20 THE COURT: I'm sorry, say that again, please.

21 MR. MORDECHAY MALKA: If the Court will tell me I  
22 cannot -- I'm not allowed to talk to anyone in the world, in the  
23 entire world, I will follow it. I will follow it. Maybe I'm  
24 dangerous. Maybe I'm that dangerous. I'll believe you, I will  
25 leave -- I will trust you and follow you. But telling me the

1 conditions that the Government say? Dehumanizing my community,  
2 violating my freedom and saying a pre-approved list, your Honor,  
3 those are things that I'm not allowed to -- I'm not allowed --  
4 your Honor, this is not --

5 THE COURT: Listen, ultimately these are the  
6 Government's proposed conditions. If the conditions are  
7 imposed, it will be me, it will be the Court, that will be  
8 imposing the conditions, okay? So that answer that you just  
9 gave was...I don't understand it.

10 I don't understand -- when you say you would accept a  
11 condition that you would not talk to anyone in the world, but  
12 you wouldn't accept the condition as proposed by the Government,  
13 I don't understand that, those two things are inconsistent with  
14 one another, so I need a clearer answer, that if I, the Court,  
15 were to impose the conditions that are recommended by the  
16 Government, if I were to impose those conditions, would you  
17 comply with those conditions.

18 It's really a yes-or-no question, and if the answer is  
19 no, it's important that I understand that.

20 MR. MORDECHAY MALKA: Your Honor --

21 THE COURT: And if you'd like to discuss that with Ms.  
22 Wolfe for a second, that's perfectly fine, but we're nearing the  
23 end of time that we have available for this proceeding. We've  
24 already pushed off another proceeding that was scheduled for  
25 eleven-thirty by forty-five minutes, which is fine, because

1 there was a lot of material for us to cover here today, but we  
2 also have multiple other cases, that's what I was just  
3 discussing with Ms. Brown, there are a lot of items that the  
4 Court needs to attend to today, so we're not a hundred percent  
5 at the end, but we're very close to the end, and in order for me  
6 to be able to make final determinations on these questions, I do  
7 need to know the answer to the question that I just asked you,  
8 which is, if I were to impose the conditions that were  
9 recommended by the Government, would you be able to comply with  
10 those conditions.

11 And if you'd like to take a minute to discuss that  
12 with Mrs. Wolfe, I recommend that you do that.

13 MR. MORDECHAY MALKA: Thank you.

14 (Defendant consults Standby Counsel)

15 MR. MORDECHAY MALKA: Your Honor -- sorry.

16 THE COURT: That's okay.

17 MR. MORDECHAY MALKA: Your Honor, as I said, I will  
18 agree to whatever hard conditions you gave me, but conditions  
19 that is on the face violating my constitutional rights, it's  
20 only the condition that will cause irreversible harm, as the  
21 Second Circuit already laid out that this is a different factor,  
22 irreversible harm, conditions for bail is always appealable,  
23 whatever, so conditions like this is causing me irreversible  
24 harm, then I'd rather go back to jail, your Honor. I would  
25 rather go back to jail for another three years also. I'll go

1 back for another three years of jail.

2 If the Court really determine that they feel I deserve  
3 it, I trust you, I will go back to jail, your Honor, but --

4 THE COURT: Mr. Malka, it's not a question of what you  
5 deserve or don't deserve, it is a legal standard that I am  
6 required to apply, and what I am trying to understand is  
7 whether...you claim that these conditions would present  
8 irreversible harm to you. That is your right to make that  
9 argument, and any decision I make, whether it is to detain you  
10 or release you subject to conditions, is appealable, so you can  
11 take that appeal and seek a de novo review of this bail decision  
12 by Judge Romàn, whenever he's able to schedule you for that  
13 hearing.

14 I understand that if I were to impose those  
15 conditions, you would not be happy with those conditions. I  
16 understand that. But what I think you've just said is that if I  
17 were to impose these conditions, you will not comply with them  
18 and that you would prefer to go back to jail rather than face  
19 this particular set of conditions.

20 Is that correct?

21 MR. MORDECHAY MALKA: Yeah, what I'm trying to say is  
22 those conditions harder make me more than --

23 THE COURT: Than being in jail.

24 MR. MORDECHAY MALKA: More, yes. It's more worse than  
25 in jail.

1 THE COURT: These conditions would be worse for you  
2 than being in jail and so if my decision is that the only way I  
3 could release you would be subject to these conditions, then it  
4 would be your preference, in fact, to returning to jail because  
5 being in jail is less...onerous for you than being out of jail  
6 with these conditions.

7 Is that what you're saying?

8 MR. MORDECHAY MALKA: For myself?

9 THE COURT: For yourself.

10 MR. MORDECHAY MALKA: And for -- the, the reason why I  
11 would want to even return to jail is not to (inaudible) for  
12 myself and for my Jewish community.

13 THE COURT: Okay.

14 MR. MORDECHAY MALKA: My Jewish community has been  
15 persecuted during centuries and those were what -- these were  
16 the main arguments of everyone prosecuted, that they are  
17 dangerous. That's exactly what I feel the Government trying to  
18 do. Label this community as dangerous, dangerous people,  
19 kidnappers, child abusers, exactly same accusations that  
20 followed us centuries upon centuries. And I can prove it, I'm  
21 ready to prove that.

22 THE COURT: Okay, and you'll have the opportunity to  
23 prove that at your trial next month.

24 MR. MORDECHAY MALKA: But, but, but, your Honor, if  
25 the Court really wants to make a decision, I -- your Honor, I

1 just gave you my whole review of the evidence that I want to  
2 impose. I want the Court to allow me to prove that I don't need  
3 those conditions. I'm not under section C, I'm under section B.  
4 I'm not under this section. I don't need those conditions. I  
5 don't need -- there's no any reason for those conditions, it's  
6 unreasonable conditions, and I want the Court to allow me to  
7 prove that. I believe this is my right. If it's not, tell me.

8 THE COURT: I understand your position. That, we have  
9 addressed. I am not going to continue this bail hearing to  
10 allow the presentation of all of that evidence. That -- if you  
11 want to include that as part of your appeal of the  
12 determination, you're welcome to do that as well.

13 Let me turn to you, Mr. Matityau Malka.

14 I want to be clear about this, because you've now  
15 heard everything that your cousin has had to say about the  
16 merits of the case, from his perspective at least, and maybe  
17 it's your perspective, too, but also his position with respect  
18 to the conditions, and I know I asked you this already, but I  
19 want to be entirely comfortable and sure that I understand your  
20 position. And before you answer, you should talk to Mr. Vita,  
21 but, again, I'm going to ask you the same question I asked you  
22 earlier just to make sure that your position is no different now  
23 than it was after you heard your cousin's presentation, and that  
24 is, if I were to determine that these conditions proposed by the  
25 Government are necessary in the Court's view to reasonably



1 assure your appearance and the safety of any person or the  
2 community, would you abide by those conditions.

3 Talk to Mr. Vita for one second and then let me know.

4 (Defendant consults Standby Counsel)

5 THE COURT: Mr. Malka.

6 MR. MATITYAU MALKA: Yes, your Honor, I just want to  
7 make it one more time clear, that I know the Court has just  
8 asked me a yes-or-a-no answer, but the thing I just -- I'm  
9 adopting in all the arguments and the statements that my cousin  
10 just did in full. This is one thing.

11 And the other thing is that I'm -- because all the  
12 arguments that we already did now, how much it's possible in  
13 this short hearing even was one (inaudible) subpoena a few other  
14 witnesses and few other people that will for sure show for the  
15 Court that I am not a flight risk and dangerous for the  
16 community, so one just...I was very much to make it clear to the  
17 Court that even if it to be a \$500,000 secure bond or other very  
18 hard conditions that is not mention here that the Court can find  
19 and to put it on me, I will obey it hundred percent and I will  
20 not violate any state or federal or any kind of any law while I  
21 am outside on bail, but just I think really what asking the  
22 Court because I'm suffering so much, that right now I'm  
23 incarcerated already here in jail over three years, and not just  
24 I am suffering from that, the minors, so-called alleged victims,  
25 also suffering so much from them.

1           And especially my family, my mother, my father, and my  
2 wife and my children, they couldn't stop to cry, with their  
3 eyes, of all the abusing that's going already over here, over  
4 three years, from the Government and all the allegations what  
5 they are bringing down to the Court, everything is just false  
6 allegations based on newspapers and based of people they're  
7 trying to shrink (ph) up some information and to send it to the  
8 Government to prove our incarceration like Mr. Abraham Greenwald  
9 and his, and his other people that he's helping out for this  
10 reason, just to break down our community humanity and  
11 physically, and I'm sure with the help of God, that the Court  
12 hopefully will be able to put on me any other condition, even  
13 500 secure bond -- \$500,000 secure bond or more co-signers and  
14 real property or even any other very hard condition, but just  
15 here while I'm now in jail for the last three years, I was able  
16 to talk to my whole community and I didn't violate any kind of  
17 any rule and I didn't -- and I'm not kidnapping, I'm not attempt  
18 kidnapping, nothing, any violation I didn't do.

19           So if I was in jail for three years and all the phone  
20 calls is recorded and the Government have access to it and the  
21 Government didn't found nothing that I was getting involved, so  
22 why outside when my phones will be also recorded what can I do,  
23 which kind of violation can I do more outside if my phone is  
24 still the same recorded like jail and is sent directly to my  
25 standby counsel, or if it's not an option, to Pre-Trial

1 Services, then they can have an option to review it one phone,  
2 one computer, limited everything, I'm agree with that. Even  
3 against my mind I will obey it, but just...

4 THE COURT: Let me just address a couple of those  
5 points.

6 First, the circumstances are entirely different when  
7 somebody is in jail versus out of jail in terms of what they're  
8 capable of doing, because when you're in jail, you're in jail.  
9 I mean, there's a fundamental difference between what you are  
10 capable of achieving in terms of potential flight or potential  
11 danger when you are not in custody. It's just -- it's, it's  
12 apples and oranges. It's an entirely different analysis.  
13 That's one point.

14 And the other point, and you've mentioned this a few  
15 times now so I think it's worth just addressing briefly, the  
16 idea that the phone calls are recorded and therefore there would  
17 be some sort of investigative avenue available to the Government  
18 after the fact to pursue whatever may or may not happen as a  
19 result of those calls if they were for a nefarious purpose, it's  
20 not as though Mr. Ligtenberg and Mr. Adams are sitting at their  
21 desk listening to all of these phone calls. That's not how it  
22 works.

23 I'm not sure what you envision in terms of the  
24 monitoring of these phone calls, but the Government doesn't have  
25 the capability to be real-time monitoring every single phone

1 call that's being recorded from every criminal defendant that's  
2 out there in the surround, that's just not how it works, so to  
3 suggest that that alone is a sufficient backstop to address the  
4 concerns that have been identified by the Government in this  
5 case is just not accurate. I understand the logic of your  
6 argument to some extent, but I think it just -- it reflects just  
7 a misapprehension of the resources and the capabilities of the  
8 Government to a certain degree.

9 But, look, we're at the two-hour, two-and-a-half-hour  
10 mark now of this hearing, we had a ten-minute recess at some  
11 point earlier today, but it is time for me to make rulings on  
12 these matters.

13 I did see at one point, just briefly, Mr. Mordechay  
14 Malka, you seemed to be trying to get the attention of the  
15 interpreter while your cousin was speaking. Is there something  
16 you need to ask him to make sure you understand what is  
17 happening in this proceeding? Please take a moment to confer.

18 MR. MORDECHAY MALKA: Sorry.

19 (Off-the-record discussion)

20 MR. MORDECHAY MALKA: It's a letter, your Honor, from  
21 my five young children directly to the Court for today's  
22 proceeding. They wrote it. It's directly in connection with  
23 your determination regarding my release or not. I feel I -- if  
24 possible...

25 THE COURT: It's a letter from your children?

1 MR. MORDECHAY MALKA: My five young children.

2 THE COURT: Asking for your release?

3 MR. MORDECHAY MALKA: Yes.

4 THE COURT: Okay, I certainly will take judicial  
5 notice of the fact that it will be your children's very strong  
6 preference to have you released, and as with many defendants who  
7 come before the Court on many different matters, the continued  
8 incarceration of a parent, loved one, sibling, child, close  
9 family relation is incredibly burdensome on a family. I  
10 understand that. It is something that I think about in every  
11 proceeding that I conduct from this bench.

12 With respect, it's not necessary for me to hear an  
13 entire letter from your children. I, I do appreciate -- I have  
14 no difficulty appreciating the difficult -- the challenges and,  
15 I'm sure, the absolute heartbreak that your family faces as a  
16 result of your incarceration. Regardless of whether you  
17 ultimately are convicted of these crimes with which you are  
18 charged or not, truly, it's undoubtedly an incredible burden on  
19 your family, just as it is for criminal defendants in all kinds  
20 of cases, so I don't need to hear that letter because I well  
21 understand that issue, but I thank you for raising it  
22 nonetheless.

23 Mr. Malka, Mr. Matityau Malka, I imagine the same is  
24 true for your family as well, but go ahead.

25 MR. MATITYAU MALKA: Sorry, your Honor, but just a

1 small thing for a minute.

2 Just my standby counsel already mentioned it in a  
3 letter to the Court, I just want to refresh it one more time,  
4 that even the -- of the previous trial that it was, that was  
5 took away -- few seconds before the jury selection was took away  
6 the pro se status of the two defendants, so their standby  
7 counsels was not ready and to step in from a second to a second  
8 to proceeding the trial, so the Government trying to bring up to  
9 the Court a million of times that we already have in our hand a  
10 convicted...cases for sure will get convicted where there's a  
11 secure guilty plea, but at end of the day, the defendants who  
12 was get convicted, they was not have the ability to...bring out  
13 the evidence in the same way I am trying to do now, so if there  
14 is not any possibility to make a continuing because we already  
15 over two hours and a half, so I just want to say the conclusion  
16 of Judge Román was when the sentencing guidelines, the other  
17 defendants who was convicted was charged twice with parental  
18 abduction and each one carries a maximum of three years, so  
19 together is six years, but Judge Román con...

20 (Defendant consults Standby Counsel)

21 MR. MATITYAU MALKA: He gave a concurrent sentence for  
22 three years for those two same counts.

23 So I'm already here over -- almost -- over  
24 thirty-seven months and I'm willing to obey every condition, and  
25 I just hope that it would be possible to put any other condition

1 that is possible -- if there's no any possible to have it  
2 continued, I really requesting to a continue, but if there is no  
3 any possible to have a continuing date so at least if it's  
4 probable to put any -- even a hard condition, a very hard  
5 condition, and I will obey it full, just to take away the  
6 condition about to violate my religion.

7 THE COURT: Okay. I don't see that condition -- I  
8 mean, you keep representing it as the condition that violates  
9 your religion. I don't see it that way.

10 And just to be clear, I've asked you this multiple  
11 times, but that last statement makes me want to ask you one  
12 final time, if I reject your request and impose the condition  
13 that you feel imposes on your religion, would you still abide by  
14 it even though you would be unhappy with it. Would you still  
15 follow it even though you'd be unhappy with it.

16 (Brief pause)

17 MR. MORDECHAY MALKA: I really want to make sure to  
18 the Court that I will obey every condition that the Court will  
19 impose on me, I'll obey it full, but just this condition about  
20 Lev Tahor, I'm really asking the Court if it's possible to put  
21 something --

22 THE COURT: I understand that you're asking that, I  
23 really do, and, and defendants, usually through counsel, ask for  
24 conditions to be dropped or modified all the time. Okay, this  
25 one is special to you because it's your case and your condition,

1 but it's -- as a concept, it's very familiar to the Court, okay?  
2 So I understand that you are asking -- and you've made many  
3 arguments that I've heard today for why that condition shouldn't  
4 apply. I understand all of those arguments. But if I reject  
5 the arguments and I choose to impose this condition, is it still  
6 true that you'll comply with all of the conditions? Because  
7 that would be one of the conditions if I choose to go that way.

8 Will you still comply with that condition.

9 MR. MATITYAU MALKA: I'll, I'll be able to obey every  
10 condition that the Court will impose on me, but just this  
11 condition, I'm really asking that --

12 THE COURT: Mr. Malka, you have to be able to answer  
13 this question without ending the sentence by saying "but." You  
14 have to either be able to answer the question by saying you will  
15 comply, period, or "that condition is just too much and I can't  
16 possibly do it, I can do anything else, but I can't possibly do  
17 that," because if it's the second, you can't possibly do that,  
18 then you might be in the same situation as Mr. Mordechay Malka  
19 who has essentially said that he cannot comply with that  
20 condition and that, much as he would prefer in a general sense  
21 to be released, he can't abide by that condition and therefore  
22 understands that if I were to deem that necessary, he would have  
23 to go back to jail.

24 So this will be the last time I ask you to try to  
25 answer this question cleanly and clearly, without saying "but,"



1 without a further argument about it: if I were to impose that  
2 condition, meaning the condition that you cannot directly or  
3 indirectly associate or have contact with any individual  
4 currently or formerly associated with Lev Tahor except for those  
5 individuals who you list for the Government and the Government  
6 and Pre-Trial Services don't object to, if I were to impose that  
7 condition, could you comply with it, yes or no.

8 MR. MATITYAU MALKA: I don't see any way how I'll be  
9 able because I'm believing that this is, this is harmed my  
10 defense because I must prepare for trial and this will be hard  
11 for my defense, so I don't see any way how I'll be able to be  
12 prepare for trial by restricting not to talk to Lev Tahor, so I  
13 don't see any way --

14 THE COURT: You will have the ability to contact your  
15 co-defendants and contact people from Lev Tahor in a restricted,  
16 but not prohibited way. I thought -- heh. If the answer is you  
17 can't do it, then that's the answer, but that's, that's not what  
18 you've been saying for the last two hours. That's not what Mr.  
19 Vita represented that you were prepared to say here today.

20 This feels like we're going backwards, Mr. Malka. It  
21 feels like we're going back to where you were in October, and if  
22 that's the case, then fine, but you have to be clear with me  
23 about it now.

24 MR. MATITYAU MALKA: I think I --

25 THE COURT: But just to be clear, in October, before

1 Judge Román, when he ultimately concluded that you had said you  
2 couldn't comply with the conditions, you tried to back away from  
3 that, despite everything that you had just said to Judge Román.  
4 I've given you many opportunities to be clear with me about what  
5 your intentions are, and so if you are going to say that you  
6 cannot comply with these conditions if I were to impose them,  
7 there's not going to be any going back.

8           Because I really have been trying to give you every  
9 opportunity to let them know that you would be able to comply  
10 with these conditions, that was my understanding coming into  
11 this proceeding today, you've said that, in fact, at different  
12 points during this proceeding, but here at the very last minute,  
13 two hours and forty minutes into this hearing, you seem to be  
14 hesitating, and so it's essential that I know now once and for  
15 all so I can make a final, final decision, which you can then  
16 appeal, but I need to know what your answer is to this question.

17           I'm going to give you thirty seconds to talk to Mr.  
18 Vita just so it can be completely clear what the stakes are in  
19 terms of the answer to that question. Okay, do that, please.

20           (Defendant consults Standby Counsel)

21           MR. MATITYAU MALKA: Your Honor --

22           THE COURT: Hold on.

23           (Defendant consults Standby Counsel)

24           THE COURT: Mr. Malka, Mr. Matityau Malka...

25           MR. MATITYAU MALKA: Yes. I think I cannot see any

1 way how I'll be able.

2 THE COURT: You cannot see how you'll be able to  
3 comply with those conditions. Is that what you're saying?

4 MR. MATITYAU MALKA: Just with this condition with --

5 THE COURT: Right, with the conditions that we've been  
6 focused on, about not contacting the co-defendants and not  
7 contacting Lev Tahor.

8 MR. MATITYAU MALKA: Yes, but beside that, every,  
9 every other condition --

10 THE COURT: I understand that. Okay.

11 Mr. Mordechay Malka.

12 MR. MORDECHAY MALKA: Yes, your Honor, sorry. I feel  
13 there is left out, there is one point that's missing here that's  
14 very important for the Court to know.

15 As I saw in the -- I mean, many cases, for example,  
16 *United States v. Markier* (ph), Second Circuit, so it says that a  
17 defendant is obligated to challenge the Government's proffer.  
18 If he's not challenging it, it is accepted -- being accepted as  
19 true, and, for example, saying *Markier's* failure to quote here  
20 on page eleven --

21 THE COURT: Mr. Malka, you don't have to quote the  
22 case; you have absolutely challenged the Government's proffer.  
23 You have. There's no default finding here that the Government's  
24 proffer is true because of a failure to challenge it. That's  
25 not the situation we have.

1 I appreciate the point, I understand what that case is  
2 about, but you haven't sat quietly by and failed to challenge  
3 the proffer. I have not allowed you to present all of the  
4 evidence that you requested to present in all of its different  
5 forms, but that does not mean that you have not challenged the  
6 Government's proffer. You absolutely have challenged it. That  
7 doesn't mean that I have to agree with your arguments either,  
8 but this is not a case where you've waived your arguments.  
9 Certainly.

10 MR. MORDECHAY MALKA: Okay, I understand that, thank  
11 you, Your Honor, but one thing on the other side is that one  
12 point that I didn't make is the Government is obligated to prove  
13 dangerous, dangerous by clear and convincing evidence, they --  
14 this is their burden of proof, and --

15 THE COURT: Well, I certainly understand that.

16 MR. MORDECHAY MALKA: And, your Honor, my argument  
17 will be not only they didn't prove it by clear and convincing  
18 evidence, they didn't provide any evidence at all.

19 THE COURT: Okay.

20 MR. MORDECHAY MALKA: They're saying a speech or  
21 providing a submission is not evidence, your Honor.

22 THE COURT: I understand.

23 MR. MORDECHAY MALKA: I did provide evidence and I  
24 wanted to provide evidence.

25 THE COURT: I understand all of that.

1 MR. MORDECHAY MALKA: So --

2 THE COURT: I do.

3 MR. MORDECHAY MALKA: All right.

4 THE COURT: Thank you, Mr. Malka.

5 MR. MORDECHAY MALKA: Thank you, Your Honor.

6 THE COURT: All right, Mr. Ligtenberg...I, I take it  
7 that the Government's position here, having heard everything  
8 we've heard for this lengthy hearing, is that the defendants,  
9 Mr. Malka and Mr. Malka, are not prepared to comply with the  
10 conditions that the Government has proposed if the Court were to  
11 accept all of those conditions.

12 Is that right?

13 MR. LIGTENBERG: Yes, your Honor.

14 THE COURT: Okay.

15 All right, that's my understanding, too, based on the  
16 various colloquies we've had here today, so let me go through  
17 and issue my findings here today.

18 I'm going to start with Mr. Mordechay Malka whose  
19 situation is a bit different because this is a first bail  
20 hearing for Mr. Mordechay Malka.

21 Mr. Malka, in making a bail determination, I must  
22 consider the following factors that I alluded to earlier: the  
23 nature and circumstances of the offense charged, the weight of  
24 the evidence against you, your history and characteristics, and  
25 the nature and seriousness of the danger to any person or to the

1 community that would be posed by your release.

2           As you just pointed out accurately, the Government  
3 bears the burden of establishing by clear and convincing  
4 evidence that you are a danger to the community or establishing  
5 by a preponderance of the evidence that you are a flight risk.  
6 In this case, I find that the Government has met its burdens of  
7 establishing that there are no conditions that I can impose that  
8 will reasonably assure your appearance and the safety of the  
9 community. I make that decision based on all of the information  
10 that has been presented to me, including the Pre-Trial Services  
11 report, the arguments and information provided by Counsel and by  
12 yourself in your pro se capacity, and in considering all of the  
13 factors set forth in Title 18 U.S. Code § 3142(g).

14           The nature and circumstances of the offense charged  
15 here are serious.

16           I understand that you, Mr. Malka, have a very  
17 different view of what actually occurred in this set of  
18 circumstances that led to the charges in the indictment, and I'm  
19 sure that you will do all that you can to present those  
20 arguments at your trial coming up next month, but the nature and  
21 circumstances of the offenses charged here are very serious and  
22 weigh in favor of detention.

23           The weight of the evidence against you as proffered by  
24 the Government, you know, you've put forward a lot of arguments  
25 as to why the weight of the evidence against you is not

1 particularly strong. The Government takes the position that the  
2 weight of the evidence is strong. We have not engaged in a  
3 lengthy recitation or presentation of evidence. I've accepted  
4 proffers from both sides about the weight of the evidence, and I  
5 am not going to rely on the weight of the evidence as an element  
6 of the decision here, although the fact -- despite your  
7 arguments about what was and wasn't allowed to be presented at  
8 the prior trial, the fact that there is a prior conviction of  
9 co-conspirators in this case suggests that, at least with  
10 respect to those defendants, the weight of the evidence was  
11 strong, but, again, you have a presumption of innocence, you'll  
12 be having a separate trial with a separate jury, and you'll be  
13 entitled to your own determination from that jury as to your  
14 guilt or innocence.

15           Ultimately, this is not a case where the -- turning to  
16 history and characteristics, this is not a case where the  
17 defendants have any criminal history, there's no indication of  
18 participation in criminal activity while on probation, parole,  
19 or supervision, but we do have some significant issues that come  
20 up in the history-and-characteristics prong that weigh in favor  
21 of detention.

22           Mr. Malka has limited ties to the United States, his  
23 close family and religious community, as he's described, are  
24 located abroad in Guatemala, the crimes at issue in this case  
25 involve border crossings that, at least in the Government's

1 proffer, have not yet been completely understood. There is some  
2 indication/evidence here as part of this conspiracy about an  
3 unwillingness to follow court orders or willingness to defy  
4 court orders. I do understand that there arguments about  
5 whether those orders should come into play here or not, but  
6 nevertheless, there is a lot here that points to risk of flight  
7 for Mr. Malka. The opportunity to flee, the availability of  
8 communities abroad, all are factors that heavily weigh in favor  
9 of detention on flight grounds.

10           Now, the fact that Mr. Malka came here voluntarily to  
11 face trial is a fact that weighs in his favor on the  
12 risk-of-flight grounds. Yet, still, everything that I've heard  
13 here today about his ties to his community in Guatemala and his,  
14 his...lack of ties to the United States and the strong, strong  
15 desire to be reunited with that community, very much weigh in  
16 favor of detention, and the Government has certainly met its  
17 burden to prove risk of flight by a preponderance of the  
18 evidence.

19           I alluded to the sentencing calculations earlier as a  
20 potential factor that would weigh against the flight  
21 determination and that is a factor that I have considered. The  
22 fact that Mr. Malka has spent...years in prison or in custody  
23 already pending these charges is certainly -- and the amount of  
24 sentencing exposure that he faces, even if he is convicted, is  
25 reduced by that reality. However, the arguments about...well,



1 that's not enough to overcome all of the other factors that I've  
2 just alluded to with respect to the risk of flight.

3           As far as danger to the community, there is a very  
4 strong insistence here by Mr. Malka that whatever happened with  
5 respect to the minor victims in this case was actually done for  
6 the protection of those minor victims.

7           Now, how that will play out at trial is a different  
8 matter, but how that plays out from the perspective of danger to  
9 the community is it gives the Court great pause, to know that  
10 there's at least an ongoing and, clearly, very strongly and  
11 deeply-held view that the actions taken by the alleged  
12 co-conspirators in this case were for the benefit of these  
13 alleged victims, and it does strongly suggest that further harm  
14 could come to those victims, potentially, if there were to be --  
15 if Mr. Malka were to be released on, on...in this case.

16           What is unusual about this matter and what has been  
17 the subject of most of our discussion here today is that the  
18 Government has proposed a set of conditions that it believes  
19 would be sufficient to ensure the appearance of Mr. Malka and  
20 the safety of the community. And those conditions are  
21 undoubtedly strict, there's no question about that; I don't  
22 think anyone would dispute that. I don't think Mr. Ligtenberg  
23 would even dispute that. However, those conditions certainly  
24 would have given the Court comfort that Mr. Malka could be  
25 released and it would reasonably assure the safety of the

1 community and Mr. Malka's appearance in court. There is clearly  
2 a path forward to that here today, but Mr. Malka has made clear  
3 in his statements that he would not be able to abide by the  
4 conditions that were proposed by the Government, and the Court  
5 finds that those conditions would be reasonable conditions to  
6 impose, given all of the unusual facts and circumstances here.

7           And Mr. Malka has said quite plainly that he would not  
8 be able to comply with those conditions and, in fact, it would  
9 be less onerous for him to remain in jail, you know, adding to  
10 the list of things that I have not ever heard before sitting  
11 here on the bench, that that's one of them, but that is clearly  
12 Mr. Malka's firmly-held and honestly-held belief, and he's been  
13 very candid with the Court about that and I respect the candor  
14 at least.

15           So for all of those reasons, I find that there is no  
16 condition or combination of conditions that I could impose that  
17 would be -- that the defendant, Mr. Malka, would be able to  
18 comply with that would reasonably assure the defendant, Mr.  
19 Malka's, appearance and the safety of the community and  
20 accordingly, Mr. Malka will remain in custody pending trial on  
21 May 18th.

22           With respect to Mr. Matityau Malka, the determinations  
23 have already been made as to Mr. Malka's...danger to the  
24 community and risk of flight by both Judge Román and Judge  
25 McCarthy. I adopt all of those findings. Nothing that has

1 happened in the intervening months has changed any of those  
2 factors that led both Judge McCarthy and Judge Román to conclude  
3 that Mr. Malka, this is Matityau Malka, was a danger to the  
4 community or his release would pose a danger to the community or  
5 there was a risk that he would not appear for his court  
6 proceedings.

7           Again, there is a set of conditions that the  
8 Government has proposed. This was true in the October 2021  
9 hearing before Judge Román. There was a set of conditions that  
10 was proposed. As was the case with Mordechay Malka, it is an  
11 onerous and burdensome set of conditions. However, these are  
12 conditions that the Court would have adopted and would have put  
13 in place for Matityau Malka and would have enabled Matityau  
14 Malka to be released on bond.

15           An hour ago or so, I thought that Mr. Matityau Malka  
16 was prepared to accept those conditions, not happily, not  
17 willingly, but that he was certainly willing to abide by the  
18 conditions despite his strong objection to them, but it is clear  
19 from the latest colloquy that he is simply not prepared to  
20 accept conditions with respect to contact with co-defendants,  
21 being in the presence of standby counsel in a language that  
22 standby counsel can understand, and limitations on contact with  
23 members of the Lev Tahor community.

24           And so as a result of that, I must again conclude, as  
25 Judge Román did before me, that because Mr. Malka is not

1 prepared to comply with these conditions, then I am not able to  
2 authorize his release subject to these conditions because  
3 there's no reason for the Court to believe that Mr. Malka would  
4 comply with those conditions, and accordingly, having adopted  
5 the findings of Judge McCarthy and Judge Román with respect to  
6 risk of flight and danger to the community and understanding Mr.  
7 Malka's continued unwillingness to comply at least with those  
8 specific conditions that I've referenced, I am going to require  
9 that he return to custody as well pending trial.

10 Of course, as we've talked about multiple times  
11 throughout today's proceeding, both Mr. Malka and Mr. Malka have  
12 the right to appeal this decision and seek further review of  
13 this decision by Judge Román, and that application can be made  
14 at the appropriate time.

15 All right, I believe that concludes our business here  
16 today.

17 Mr. Ligtenberg, is there anything further we should  
18 address now from the Government's perspective?

19 MR. LIGTENBERG: No, thank you, Your Honor.

20 THE COURT: Thank you.

21 Mr. Matityau Malka, is there anything further we  
22 should address from your perspective today?

23 MR. MATITYAU MALKA: Yes, your Honor.

24 THE COURT: Briefly.

25 MR. MATITYAU MALKA: Yes, I just want to ask the Court

1 if it's possible to expedite this whole proceeding on transcript  
2 because usually we are waiting, like, four or five months for  
3 each transcripts and if it's possible to have it expedite in a  
4 few days? Because --

5 THE COURT: Yes, that's a reasonable request, Mr.  
6 Malka.

7 Mr. Ligtenberg, can the Government please order the  
8 transcript of this proceeding forthwith and have it turned  
9 around for delivery tomorrow?

10 MR. LIGTENBERG: Yeah, assuming that works for --

11 THE COURT: For the court reporter.

12 I mean, the earliest convenience possible for the  
13 court reporter, which I think would be next day, which means  
14 that the Government would have the -- should be able to have it,  
15 assuming the resources are available from the court reporters to  
16 have it prepared tomorrow. It's a long proceeding and...there's  
17 been a lot of talking, so it's possible that that might slip  
18 till the middle of the week, but certainly this week, it should  
19 be able to be provided to standby counsel.

20 MR. MATITYAU MALKA: Thank you, Your Honor.

21 THE COURT: Anything further, Mr. Malka? At this  
22 time? Mr. Malka, is there anything else that you'd like to  
23 raise at this time? Matityau Malka?

24 MR. MATITYAU MALKA: No, I just...

25 THE COURT: Okay.

1           Mr. Mordechay Malka, anything further that you would  
2 like to raise at this time?

3           MR. MORDECHAY MALKA: No, thank you, Your Honor.  
4 Thank you.

5           THE COURT: Okay, thank you, everybody. We'll stand  
6 adjourned for today. Stay safe and stay healthy, everyone.  
7 Take care.

8  
9 Certified to be a true and accurate  
10 transcript of the digital electronic  
11 recording to the best of my ability.

12 \_\_\_\_\_  
13 Tabitha R. Dente, RMR, CRR  
14 U.S. District Court  
15 Official Court Reporter

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